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ABSTRACT

This document analyzes the major elements of Maryland school and college law pertaining to governance. While recognizing differences between school and college law in Maryland, this study shows that there are many elements in common between the two. This study will be primarily concerned with civil law rather than criminal law. School personnel or students who violate criminal laws face the same procedures and problems as do those citizens who are not connected with a school system or an institution of higher learning. While this study does not intend to make lawyers of laymen, it does propose to aid citizens in understanding basic provisions and concepts of Maryland school and college law. It aims to show a relationship between school and college law to help bridge a gulf between the elementary and secondary levels and the collegiate level. Examined is the Maryland school and college law in its historical perspective and authorities and functions of state and local boards. (Author/KE)

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MARYLAND LAW AND EDUCATION

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July 1974

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Governor's Study Commission
on Structure and Governance of Education for Maryland
The Honorable Marvin Mandel, Governor

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PREFACE

This paper is part of a substantial amount of research work which was defined and solicited by the Governor's Commission on the Structure and Governance of Education (the Rosenberg Commission) from many scholarly people working throughout the Maryland system of education.

The work on this paper was performed by Robert Y. Dubel, deputy superintendent of the Board of Education in Baltimore County. Dr. Dubel recently compiled information about Maryland school and college law for his doctoral dissertation at George Washington University in 1973. This paper is an outgrowth of that compilation.

The purpose of Dr. Dubel's paper is to analyze the major elements of Maryland school and college law that pertain to governance. His views do not necessarily reflect the thinking of the Commission. However, the Commission felt this type of information was vital to their study of Maryland's educational structure.

Harry L. Phillips

Executive Director

CHAPTER I

INTRODUCTION

The Constitution of the United States is silent on the subject of education. Under the Tenth Amendment to the Constitution, all matters not enumerated as federal powers are delegated to the respective states.[1] Thus, the function of education in the United States is considered a responsibility of the fifty states.

School and college law reflect the diversity of American education, varying greatly among the fifty states. No two states have identical school and college law. It is possible to learn broad principles of school and college law through general textbooks in the field, but, to be knowledgeable, citizens in a given state must study the specific educational law of that state.

A Maryland is severly inconvenienced and handicapped in attempting to acquire knowledge and understanding of the school and college law of his state because a synthesis of its complex elements is non-existent. For example, to understand the scope of power of the State Board of Education, a student of the subject must familiarize himself with numberous statutes enacted by the Maryland General Assembly, a large body of bylaws adopted by the board, and landmark federal and state court cases.

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[1] U.S. Const. amend. X

When these documents have been read and analyzed, the reader will be acquainted only with the governance of the public schools at the elementary and secondary levels; he must then pursue similar patterns of investigation to learn about the governing structures of the public community colleges, the state colleges, and the University of Maryland.

The primary source documents required for such research and analysis are not immediately available to a non-lawyer in his normal, daily setting. The purpose of this study is to make an analysis of the major elements of Maryland school and college law pertaining to governance, creating the synthesis which is currently lacking. While recognizing differences between school and college law in Maryland, this study shows that there are many elements in common between the two.

This study will be primarily concerned with civil law rather than criminal law. School personnel or students who violate criminal laws face the same procedures and problems as do those citizens who are not connected with a school system or an institution of higher learning. While this study does not intend to make lawyers of laymen, it does propose to aid citizens in understanding basic provisions and concepts of Maryland school and college law. It aims to show a relationship between school and college law to help bridge a gulf between the elementary and secondary levels and the collegiate level.

The Scope and Sources of Maryland School and College Law

Black defines "law" as follows:

> . . . That which is laid down, ordained or established. A rule or method according to which phenomena or actions co-exist or follow each other. That which must be obeyed and followed by citizens, subject to sanctions or legal consequences, is a law.[1]

Maryland school and college law is derived from constitutions, statutes, and case law.

Constitutions

Federal--While the Constitution of the United States does not contain the words "education," "school," or "college," provisions of this basic document are related to school and college law. As noted earlier, the provision of education has been deemed a state responsibility, because the Tenth Amendment to the Constitution reserves for the states all powers not specified for the federal government.

The constitutionality of federal aid to schools and colleges rests on the general welfare clause of the Constitution which empowers the Congress to: ". . . collect Taxes, Duties, Imports and Excises, to pay the Debts and provide for the common Defence and general welfare of the United States; . . ."[2]

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[1] Black, Law Dictionary 1028 (4th ed., 1968).

[2] U.S. Const., art. 1, sec. 8.

Maryland--Article 43 of the Declaration of Rights of the Constitution of Maryland provides:

> That the Legislature ought to encourage the diffuse of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce, and manufactures, and the general melioration of the condition of the People . . . [1]

Article 43 has been interpreted by the Court of Appeals as having the purpose of impressing upon the General Assembly the necessity of exercising its power for the public good.[2]

Article VIII of the Constitution of Maryland, entitled "Education," specifically requires the establishment and maintenance of a public school system as follows:

> Section 1. The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.
>
> Section 2. The System of Public Schools, as now constituted, shall remain in force until the end of said First Session of the General Assembly, and shall then expire; except so far as adopted, or continued by the General Assembly.
>
> Section 3. The School fund of the State shall be kept inviolate, and appropriated only to the purposes of Education.[3]

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[1] Declaration of Rights. Const. of Md. art. 43

[2] Clark v. Maryland Institute, 87 Md. 643 (1898).

[3] Const. of Md. art. III, sec. 52 (Amendments of 1916).

This article of the Constitution of Maryland serves as the base for a statewide system of education which was established at the 1868 session of the General Assembly and has been continued since.[1]

Article III of the Constitution of Maryland places the school system in impressive company. The budget estimates for the operation of the General Assembly, the courts, and the public schools shall be included in the budget of the Governor "without revision," and the General Assembly shall not amend the Budget Bill so as to affect "the provisions made by the laws of the State for the establishment and maintenance of a system of public schools . . . ."[2] The article does not give state school officials a blank check for providing school funds because the budget of the Governor need only include funds called for by "the provisions made by the laws." Thus, the level of support is first determined by the General Assembly. However, once the legislature has acted, it must provide the necessary funds to implement the school law, even during an economic recession in a subsequent session. Only once, in 1933, has the General Assembly enacted legislation to diminish the statutory level of financial support.[3] Thus, while this constitutional protection does not preserve the school fund under all circumstances, it does prevent the level of appropriation from being reduced by desperate last-minute budget-cutting action of a legislative committee. Elementary and secondary education has a special constitutional status, in this respect, which is not shared by governing boards of public institutions of higher education.

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[1] Laws of Maryland, 1868, ch. 407.

[2] Const. of Md. art. III, sec. 52 (Amendments of 1916).

[3] Laws of Maryland, 1933, ch. 224.

Statutes

Black defines a statute succinctly as "the written law in contra-distinction to the unwritten law."[1] The term, as used in this study, includes: acts of the Congress; acts of the Maryland General Assembly; Code of Bylaws of the Maryland State Board of Education; resolutions and regulations promulgated by the Board of Regents of the University of Maryland; Laws Relating to and Governing Policies and Procedures of the Board of Trustees of the State Colleges of Maryland; policies adopted by local boards of education; and policies adopted by local boards of trustees for community colleges.

Statutes enacted by the Maryland General Assembly directly related to the public schools are found in Article 77 of the Annotated Code of Maryland. Higher education statutes enacted by the General Assembly are contained in Article 77A. The

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[1] Black, Law Dictionary 1581 (4th ed., 1968).

State Department of Education periodically publishes both Article 77 and Article 77A and issues annual supplements which reflect both enactments by the General Assembly and decisions by the courts which affect existing statutes. This publication also contains bylaws adopted by the State Board of Education.

Case Law

This source of law is often called "judge made" law." It is derived from judicial decisions involving: (1) interpretations of the federal and state constitutions and statutes, and (2) common law.

Brown v. Board of Education of Topeka (1954)[1] is an outstanding example of case law as it affects constitutions and statutes in Maryland. In Brown, the Supreme Court concluded that the segregation of students in public schools on the basis of race constituted a denial of equal protection under law and was, therefore, in violation of the Constitution of the United States. The Attorney General of Maryland issued a detailed opinion on the subject which had the effect of nullifying all statutes which provided for a dual school system in the state:

> It would necessarily follow that, since the Constitution of the United States is the supreme law of the land, all constitutional and legislative acts of Maryland requiring segregation in the public schools in the State of Maryland are

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[1] Brown v. Board of Education of Topeka, Shawnee County, Kan. 349 U.S. 293 (1954).

unconstitutional, and hence must be treated as nullities.[1]

Common law is resorted to when the matter in question has not been the subject of legislation. Black comments on the subject of "common law" as follows:

> . . . As concerns its force and authority in the United States, the phrase designates that portion of the common law of England (including such acts of parliament as were applicable) which had been adopted and was in force at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organized part of the jurisprudence of most of the United States.[2]

The Declaration of Rights of the Constitution of Maryland, adopted in 1867, stresses the importance of the common law in giving citizens the following recourse:

> . . . That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury, according to the course of that Law, and to the benefit of such England statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Court of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution . . . ."[3]

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[1] 40 Report and Official Opinions of the Attorney General 177 (1955).

[2] Black, Law Dictionary 346 (4th ed. 1968).

[3] Declaration of Rights, Const. of Md. art. 43

The Maryland and Federal Court Systems

In recent years, case law has become an increasingly important aspect of school and college law in the United States, and Maryland has been no exception to the rule. More cases are being litigated in the 1970's than during any other period of our educational history in Maryland. As a result of court decisions, particularly in the areas of student and faculty due process rights, school and college law is rapidly changing. Educators and board members must be aware of these changes to be able to operate effectively and within the bounds of legality. A brief description of the state and federal court systems is presented to facilitate this understanding.

MARYLAND

The statewide court system in Maryland is a four tiered arrangement consisting, in ascending order, of a District Court, the Circuit Courts, the Special Court of Appeals, and the Court of Appeals. The designation of the highest Maryland court as the Court of Appeals eliminates the confusion with references to the United States Supreme Court which occurs in a state which labels its highest court as the "Supreme Court."

The Constitution of Maryland was extensively amended in 1970 to establish a District Court which stands at the base of the system. The constitutional amendments of 1970 established a "District Court" to replace "Justices of Peace."[1] Generally, these lower courts were previously referred to as Magistrate Courts. The new District Court is described in the Maryland Manual, an official publication of the state, as:

> . . . a court of record and replaces entirely the theretofore existing justices of peace, the county trial magistrates, the People's Courts in certain counties, the People's Courts of Baltimore City. . . . Although the District Court is a court of limited jurisdiction, it has been given expanded jurisdiction over the prior existing lower court system.[2]

The District Court has been granted jurisdiction in criminal, traffic, and civil matters. Juvenile jurisdiction has been granted in Montgomery County only; this power has been reserved for the Circuit Courts in other counties and in Baltimore City. General jurisdiction has been granted with respect to misdemeanors and, in addition, this court may hear cases involving certain enumerated felonies if the amount involved does not exceed $500. In civil cases, the District Court has exclusive jurisdiction if the amount in dispute does not exceed $2,500.[3]

The District Court is divided into twelve districts, with a Chief Judge being appointed for the entire system.

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[1] Const. of Md. art IV, sec. 1.

[2] State of Maryland, Maryland Manual, 1973-74 (Annapolis: Hall of Records, 1974), p. 437.

[3] Annotated Code of Maryland, art. 26, secs. 139-158.

Eighty-one judges have been allocated to this statewide court.[1]

Appeals from decisions of the District Court are heard in Circuit Court in the county in which the judgment was made. In Baltimore City appeals are taken "in criminal and traffic cases to the Criminal Court of Baltimore City and in civil cases to the Baltimore City Court."[2] The Baltimore City paralled to the county Circuit Court is often referred to as the Supreme Bench, a confusing label when it is considered that decisions of the Supreme Bench are subject to appeal to the Maryland Court of Appeals.

The state is divided into eight Judicial Circuits. Baltimore City is a separate circuit, but each of the seven other circuits serves two or more counties. These Circuit Courts serve both as tribunals of original jurisdiction and as appellate bodies for appeals from District Court decisions. Quite simply, a Circuit Court becomes the court of origin for cases which are beyond the jurisdiction of the District Court. The Circuit Court for each county, except Montgomery, has jurisdiction in juvenile cases. The judges of the circuit courts may appoint a master in chancery to hear juvenile cases. A master performs his duties under the supervision of the judge or judges who appointed him.[1]

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[1] Maryland Manual, 1973-74, p. 437.

[2] Ibid, p. 438.

A Court of Special Appeals was authorized by an amendment to the Constitution of Maryland which was ratified in 1966. Composed of 10 judges, this court hears criminal appeals, except where the death penalty was imposed, and civil appeals involving "negligence cases arising out of motor vehicle accidents, workmen's compensation cases, domestic cases and paternity proceedings."[2]

As the highest tribunal in the State of Maryland, the Court of Appeals hears appeals from the Circuit Courts in civil cases and in criminal cases if the death sentence has been imposed. It is not a court of original jurisdiction. The recent Supreme Court decisions regarding the constitutionality of the death sentence appear to have eliminated the remaining responsibility which the Court of Appeals has in the field of criminal law.[3]

The Chief Judge of the Court of Appeals, which consists of seven judges, serves as the chief administrator for the judicial system of the State of Maryland. The Court of Appeals not only makes rules for its own conduct but also establishes procedures for the lower courts in the state.[1]

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[1] Annotated Code of Maryland, art. 26, secs. 30-101.

[2] Maryland Manual, 1973-74, p. 425.

[3] Furman v. State of Georgia; Lucious Jackson, jr., v. State of Georgia; Elmer Branch v. State of Texas, United States Law Week (Washington: Bureau of National Affairs, Inc., June 29, 1972), 4923.

Federal

The great majority of school law cases is heard in state courts. The federal courts are becoming increasingly involved, however, in issues related to interpretation of the United States Constitution. Citizens may also seek redress in federal courts on the basis of diversity of residence if the "matter in controversy exceeds the sum or value of $10,000 . . . ."[2] i.e., a citizen of a state who is affected by the laws of a second state may generally be heard in a federal court.

The Constitution of the United States specifically established but a single court, the Supreme Court. Article III, Section 1, of the Constitution provides: "The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish."[3]

In exercising its constitutional authority, Congress has created 11 United States Courts of Appeal and 92 United States District Courts in the 50 states. Additionally, Congress has established a District Court for the District of Columbia.[1]

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[1] Maryland Manual, 1973-74, p. 423.

[2] United States Code Annotated, sec. 1332.

[3] U.S. Const. art. III, sec. 1.

A single United States District Court has jurisdiction over the entire State of Maryland, much to the consternation of many citizens in the populous Maryland suburbs of the District of Columbia who must travel to Baltimore City to participate in federal court cases. The District Court may also sit in the Western Maryland city of Cumberland or in the Eastern Shore city of Denton. Five judges are assigned to this court.[2]

Appeals of decisions rendered by the United States District Court in Maryland are considered by the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit is one of the 11 established by Congress, and it serves the following states: Maryland, North Carolina, South Carolina, Virginia, and West Virginia. It is composed of seven judges. The Fourth Circuit of the United States Court of Appeals may hold court in any state in the circuit, but generally it sits in Richmond, Virginia, or Asheville, North Carolina. Maryland cases are usually heard in Richmond.[3]

The ultimate appeal privilege is to the Supreme Court. Article III, Section 2, Clause 2, of the United States Constitution grants original jurisdiction and appellate power to the Supreme Court as follows:

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[1] West's Federal Practice Manual (St. Paul, Minn.: West Publishing Company, 1970), sec. 7281.

[2] *Ibid.*, sec. 7288.

[3] *Ibid.*, 7285, 7286

> . . . In all cases affecting Ambassadors, other public ministers and consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.[1]

Congress has severly limited the appellate jurisdiction of the Supreme Court, according to West's Federal Practices Manual:

> Appeal as a right to the Supreme Court exists only in a very limited number of cases. The principal method of review provided by the Congress is by petition for a writ of certiorari under which the court, pursuant to its rules, has almost complete discretion to determine which cases it will review.[2]

The nine-member court, for obvious reasons of necessity, is extremely selective in the number and types of cases it decides to hear. West's Federal Practice Manual comments as follows.

> Certiorari is denied much more often than it is granted, and the Supreme Court has clearly stated that the importance of the case, rather than the possibility of error, is the determining factor in granting or denial of certiorari. If four justices favor the granting of certioari, the writ is granted.[3]

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[1] U.S. Const. art. III, sec. 2

[2] West's Fderal Practice Manual, sec. 7283.

[3] Ibid., sec. 8842.

Despite the general difficulty of securing a hearing before the Supreme Court, many significant school and college law cases have been heard in recent years, particularly in the areas of student and faculty rights. The resulting decisions have had a profound effect on school and college law generally and on Maryland law specifically.

CHAPTER II

MARYLAND SCHOOL AND COLLEGE LAW IN ITS HISTORICAL PERSPECTIVE

It is difficult to understand and appreciate Maryland school and college law without treating the subject in terms of its historical perspective. Law is an evolving process which leans heavily upon precedent.

While it is not the intent of this study to present a comprehensive history of education in Maryland, an overview of this history may help develop a better understanding of existing law. Key developments which have had an enduring effect on the structure of the law are noted.

This summary will be treated in two parts: (1) the history of the public school system, which includes the development of the present state colleges and the community colleges; and (2) the development of the University of Maryland, whose history is not as intertwined with that of the elementary and secondary school system as is that of the state colleges and the community colleges.

History of the Maryland Public School System

Legislative bodies in Maryland have shown an interest in the provision of educational opportunity for the citizenry since 1694 when Chapter I of the Laws of the Assembly provided: "An Act for the encouragement of learning, and advancement of the of the natives of this province."[1]

A message to the General Assembly, signed by W. Bladen, Clerk, on October 2, 1696, indicates that tax money was used in constructing a school building:

> . . . and we do declare that the money that has been raised has been duly applyed to the uses it was raised for . . . towards building the Court House and Free School House which we conceive to be for the Service of God his Majesty and good of the Country . . . .[2]

King William's School was established in Annapolis in 1694, but the first building was not erected until 1701.[3] This is the only seventeenth century Maryland educational institution which survives today. The institution is now known as St. John's College; it is still located in Annapolis.

Despite this early interest expressed by the General Assembly, education developed slowly in eighteenth century Maryland and had little resemblance to public education as we perceive it today. Steiner wrote on the temper of the times:

> There was no law in colonial times requiring parents to educate their children, the theory being that parents could be trusted to do what was best for their children in accordance with their means.

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[1] Laws of Maryland, 1694, ch. I.

[2] 19 Archives of Maryland 464.

[3] Bernard C. Steiner, History of Education in Maryland (Washington: Government Printing Office, 1894), p. 21.

> . . . free-school in this country was used as a compound name indicating a certain grade of instruction . . . 'free' as applied to schools in this country was not synonymous with gratuitous . . . .[1]

The General Assembly of 1723 had visions of the first statewide system of education by requiring:

> That in some convenient time, after the end of this present session of the Assembly, there shall (for the ends before mentioned) be erected one school in each county within this province, at the most convenient place, as near the centre of the county as may be, and as may be most convenient for the boarding of children, at the discretion of the visitors, or the major part of them, that are hereafter nominated, appointed and empowered by this act, in each county.[2]

Apparently the counties gave varied interpretations of the time required of the mandate to establish schools "in some convenient time," and the dream of the 1723 General Assembly of a statewide school system was not realized until 1865.

An abortive attempt to provide for a statewide system was made in 1825 when Littleton Dennis Teackle was appointed State Superintendent of Schools and provision was made for the appointment of nine commissioners for primary schools in each county. The law was rejected on referendum by the voters in 1826, and the vision of a uniform state system of education was demolished for another generation.[1]

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[1] *Ibid.*, pp. 17, 20.

[2] Laws of Maryland, 1723, ch. 19.

The first statewide school system in Maryland was established as a result of the Constitutional Convention of 1864. Dr. Libertus Van Bokkelen, the rector of St. Timothy's Episcopal Church in Catonsville, was appointed as State Superintendent of Public Instruction by the Governor. Blauch portrayed Dr. Van Bokkelen as a man of great vision and action: "In fact no State in the Union was at that time supporting a system of public education so elaborate as that devised by Superintendent Van Bokkelen."[2]

The administration of Dr. Van Bokkelen was short-lived. Both the State Board of Education and the state superintendency, which were created by the Constitution of Maryland of 1864,[3] were abolished by the Constitution of Maryland of 1867 and by the General Assembly of 1868.[4]

Although he was swept out of office after a brief tenure of three years, Dr. Van Bokkelen's imprint on the law was significant. His concept of the state's responsibility to equalize educational opportunity is currently the basis for litigation in many states. He expressed his "equalization" premise in his Second Annual Report:

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[1] Education in the United States: Historical Development and Outlook, A Project of the Council of Chief State School Officers (Washington: National Education Association, 1969), p. 539.

[2] L. E. Blauch, "The First Uniform School System of Maryland, 1865-1868, "Maryland Historical Magazine, XXVI (1931), 207.

[3] Constitution Revision Study Documents (Baltimore: King Brothers, Inc. 1968), pp. 476-77.

[4] Laws of Maryland, 1868, ch. 407.

> The children belong to the State in a higher and nobler sense than Sparta claimed, and are entitled to equal educational privileges without reference to the section in which they claim to be born.[1]

After the Constitutional Convention of 1867 removed the State Board of Education and the State Superintendent of Public Instruction as constitutional positions, the reactionary 1868 General Assembly followed suit and eliminated any mention of either the board or the superintendent from the statutes. The Act of 1868 placed the primary organizational emphasis on the county unit.[2]

In 1870 the General Assembly realized the folly of attempting to satisfy the constitutional mandate of establishing and maintaining ". . . throughout the State a thorough and efficient System of Free public schools . . ."[3] without a state board of control or a chief administrator. The legislature created a new Board of State School Commissioners consisting of four local school board presidents or examiners (the forerunner of the local superintendent of schools) and the principal of the State Normal School.[1] The board was appointed by the Governor, subject to the advice and consent of the Senate.[2]

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[1] Second Annual Report of the State Superintendent of Public Instruction, June 30, 1866 (Annapolis: Department of Public Instruction, 1867), p.8.

[2] Laws of Maryland, 1868, ch. 407.

[3] Const. of Md., art. VIII, sec. 1.

The first State Normal School was established in Baltimore City in 1866. Dr. M. A. Newell was appointed principal of the Normal School in 1868, and until 1890 he carried the dual responsibility of serving as the chief executive officer of the state school system. The title of State Superintendent of Schools was granted to him in 1870.[3] Thus began a merger of the state school system and the normal school program, a relationship which was to continue for nearly a century.

The Act of 1870 conveyed upon the Board of State School Commissioners broad visitatorial powers quite similar to those which exist today:

> The Board of State School Commissioners shall, to the best of their ability, cause the provisions of this law to be carried into effect . . . they shall explain the true intent and meaning of the law, and they shall decide without expense to the parties concerned, all controversies and disputes that may arise under it.[4]

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[1] The term "normal school" was used in this era in many states for teacher training institutions. As will be discussed later, such institutions in Maryland were subsequently designated as "state teachers colleges" and are now named "state colleges."

[2] Laws of Maryland, 1870, ch. 311.

[3] Education in the United States: Historical Development and Outlook, p. 540.

[4] Laws of Maryland, 1870, ch. 311.

This began a tradition and procedure whereby the board performed a quasi-judicial function, an exercise which has caused minimal involvement by Maryland courts in educational affairs until recent years.

The General Assembly made no sweeping changes in the law during the final quarter of the Nineteenth Century. The position of State Superintendent of Schools and President of the State Normal School was split in 1890 with E. Barrett Prettyman assuming the superintendency.

Growing discontent with the condition of Maryland schools surfaced in the early years of the Twentieth Century. Reformers were spurred on by the 1910 federal census which ranked Maryland: ". . . among the states of the Union as thirty-first in point of illiteracy."[1]

The Act of 1914 reflected the mood for reform by authorizing a study as follows:

> It is the desire of the General Assembly that there be made a comprehensive study of the public school system of the State of Maryland, of the state-aided elementary schools and the higher institutions of the State of Maryland, with a view to correlating and coordinating the different institutions wholly or partially supported by state appropriation.[2]

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[1] Abraham Flexner and Frank P. Bachman, Public Education in Maryland, A Report to the Maryland Educational Survey Commision (New York: General Education Board, 1921), p. xi. The Flexner-Bachman study is generally referred to simply as the "Flexner Report."

[2] Laws of Maryland, 1914, ch. 844.

The famous Flexner Report resulted from this action by the General Assembly. Flexner was impressed with the state-county partnership which had developed piecemeal from 1870 to 1914:

> Public education in America has developed most satisfactorily in those states in which a judicious combination of state and local authority has been effected. The reason is plain. The influence of the state makes for unity of design and uniformity of standards; local initiative ensures the interest, effort, pride and sacrifice of the community to which the school belongs. The public school system of Maryland is of this prevailing American type.[1]

The Flexner Report, which was completed in 1915, was generally critical of the status and structure of the Maryland school system however.

These negative criticisms are summarized as follows:

1. The state has been too generous in granting financial aid to some counties which have failed to help themselves.

2. The large majority of schools are poor; teachers are poorly trained; instruction is obsolete; student attendance is irregular; and school buildings and grounds are generally unsatisfactory.

3. The offices of the State Superintendent of Schools and those of the various county superintendents are not sufficiently staffed or equipped.

4. Politics interfere with the composition and functioning

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[1] Flexner and Bachman, Public Education in Maryland, p. 8.

of the State Board of Education and the local boards.[1]

The criticisms and the recommendations of the Flexner Report were received in good grace, and the proposals for change were enacted in the main by the General Assembly in 1916. The 1916 act made the following basic changes in the school law:

1. The Governor no longer needed the advice and consent of the Senate in appointing members of the State Board of Education. The board was composed of members not subject to its authority. This meant that the Governor and the State Superintendent of Schools would no longer be members; the principle of ultimate lay control of education in Maryland was established. Terms of the members were set at seven years and were staggered, so they would overlay political administrations. The membership of the board numbered seven and remains at this level today.

2. The status of the State Superintendent of Schools was greatly enhanced. He was vested with the duty of interpreting the statutes and the bylaws of the State Board of Education. He was authorized to withhold state aid from a local system if it did not adhere to the school law. He was given a professional staff to aid him in performing greatly expanded duties. The most significant change in this office

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[1] Ibid., pp. xv-xviii.

might well have been in the provision for appointment of the State Superintendent of Schools by the State Board of Education rather than by the Governor. This change, of course, reflected the interest of the Flexner study in removing the administration of the state school system from the political arena.

3. County boards of education were to be appointed by the Governor, without the advice and consent of the Senate, for six-year staggered terms. The duties of county boards were spelled out in detail, including the right to make policy within the framework of the school law.

4. The county superintendency was professionalized. The superintendent was to be certified by the State Department of Education on the basis of professional training and experience. Teachers were to be appointed only upon his recommendation. He was authorized to interpret the school law as it applied to the county, and he was to decide disputes under the law.

5. A minimum school year of 180 days was established for all "white students;" a term of 140 days was required for "colored youth."

6. Tenure was provided for teachers.

7. Free textbooks were provided for students.

8. Compulsory attendance of pupils, aged 7 through 16, was required. However, children attaining the age of 14 were

treated leniently in this respect. Adults who harbored truants were subjected to fines.

9. The State Normal Schools were continued under the control of the State Board of Education which officially sat as a Board of Trustees for these institutions. By 1916, Bowie and Frostburg had joined Towson[1] as member institutions in the State Normal School System.

10. The State Board of Education was granted the authority to approve all institutions of higher learning.[2] As will be discussed later, the Maryland Agricultural College in College Park and the University of Maryland in Baltimore City were not to merge into the present university structure until 1920. Thus, the State Board of Education emerged in 1916 with broad power and influence not only with respect to elementary and secondary education but became the dominant board in the realm of higher education.

Although the Flexner study was supposed to include higher education within its scope, its investigation was limited to the state normal schools; it recommended that these institutions remain under the aegis of the State Board of Education and that they be strengthened.

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[1] The State Normal School in Baltimore City was moved to Towson in Baltimore County in 1915.

[2] Laws of Maryland, 1916, ch. 506.

The Flexner Report did not deal with the schools in Baltimore City. Beginning in 1872,[1] Baltimore City was given autonomy to establish and maintain a public school system. The Flexner Report did nothing to challenge or disturb this autonomy, which though eroded somewhat through the years, remains substantially intact today.[2]

The Flexner Report, and the Act of 1916 which gave it life, established the basic foundation for Maryland school law; this foundation has remained firm for the past 56 years. Maryland schools improved rapidly under the 1916 law which became a model copied in large part by many states. A 1969 project of the Council of Chief State School Officers assessed the Flexner Report and the accompanying act as follows: "The legislation enacted by the assembly in 1916 was of marked significance not only to Maryland but to U.S. educational history as well."[3]

Another measure of the effectiveness and authority of the 1916 law may be found in the fact the Court of Appeals heard but a single case related to public schools from 1916 to 1933.

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[1] Laws of Maryland, 1872, ch. 377.

[2] Annotated Code of Maryland, Section 142. The subject of the autonomy of the Baltimore City School System is treated in detail in Chapter IV, "Authorities and Functions of Local Boards."

[3] Education in the United States: Historical Development and Outlook, p. 543.

While a detailed consideration of laws dealing with school finance is not within the scope of this study, one act dealing with the distribution of state aid to education is too significant to ignore--the Equalization Act of 1922.[1] Dr. Albert S. Cook, who was the first State Superintendent of Schools to be appointed by the State Board of Education (1920),[2] expressed the following philosophy related to school finance:

> The wealth of the State should educate the children of the state, regardless of where the wealth lies or where the children live.[3]

Thus Dr. Cook joined the first state superintendent, Dr. Libertus Van Bokkelen, in foreseeing the significance of offering equal educational opportunity to all students, a subject which is involved in legislative debates and in court suits throughout the nation in 1974.

The Act of 1922 provided the legal base for guaranteeing an adequate minimum program of education for all public school children, regardless of the fiscal abilities of the respective counties.[4] Though the equalization principle enunciated by Dr. Cook in the 1920's is still alive, and though the financial formula has been changed substantially at numerous sessions of the legislature, the goal of equal educational opportunity, as measured by financial aid, has not been met. While an equalization formula still exists, it has not produced similar rates of expenditure among the 24 Maryland school systems.

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[1] Laws of Maryland, 1922, ch. 382.

[2] M. Bates Stephens followed E. Barrett Prettyman as State Superintendent of Schools in 1900 and served until Dr. Cook's appointment.

[3] Amy Crewe, No Backward Step Was Taken, (Towson, Md.: Teachers Association of Baltimore County, Inc., 1949), p. 230.

[4] Laws of Maryland, 1922, ch. 382.

Except for the Equalization Act of 1922 and the establishment of the Maryland State Teachers' Retirement System in 1927,[1] school law in Maryland remained substantially the same from 1916 to 1939 when the General Assembly again directed that a comprehensive study be made of the Maryland School System, including the normal schools, but then referred to in the law as state teachers colleges.[2]

The result was The 1941 Survey of the Maryland Public Schools and the Teachers Colleges, commonly known as the Bruner Report in recognition of the director of the survey staff, Dr. Herbert Bruner, a professor of education from Teachers College, Columbia University.

The Bruner Report shows that only three counties and Baltimore City had twelve-year public school programs in 1941. In accordance with a Bruner Report recommendation, the General

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[1] Laws of Maryland, 1927, ch. 344.

[2] Laws of Maryland, 1939, ch. 610.

Assembly enacted legislation in 1945 to expand the eleven-year curricula in the other 20 counties to conventional grade one through 12 programs.[1] The balance of the Bruner Report recommendations were concerned largely with curriculum improvement through the State Department of Education and higher financial support and, therefore, did not alter the basic structure of school law as established in 1916.[2]

The 1950's and 1960's saw many changes in the school law, but, except for a sharp curtailment of the higher education role of the State Board of Education, these alterations were principally related to increasing financial support.

By 1960 the State Board of Education and the Board of Regents of the University of Maryland shared the total responsibility for governing public higher education, except for the governance of two institutions.[3] The State Board of Education at that time served as the Board of Trustees for five state teachers colleges--Bowie, Coppin, Frostburg, Salisbury, and Towson.[4] Through local boards of education, the State Board of Education fostered and controlled the public community college system; community colleges were established, owned, and operated by local school systems. What had been established in practice with the community college movement was conferred upon the State Board of Education by statute in 1961.[1]

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[1] Education in the States: Historical Development and Outlook, p. 549.

[2] The 1941 Survey of the Maryland Public Schools and the Teachers Colleges (Baltimore: Maryland State School Survey Commission, 1941), pp. 403-24.

[3] Morgan State College and St. Mary's Seminary Junior College each had independent boards of trustees.

[4] Salisbury was founded in 1924; Coppin, founded as a Baltimore City normal school, joined the State system in 1950.

Additionally, the State Board of Education was empowered to ". . . publish annually a list of approved colleges and universities and determine by bylaws the standards for said approval."[2]

The Autonomy Act of 1952 had conveyed upon the Regents of the University of Maryland the power to:

> . . . exercise with reference to the University of Maryland and with reference to every department of same, all the powers, rights, and privileges that go with the responsibility of management, including the power to conduct or maintain such departments or schools in said University and in such localities as they from time to time deem wise; and said board shall not be superseded in authority by any other State board, bureau, department, or commission, in the management of the University's affairs . . . .[3]

The only exceptions to this autonomy involved protections for classified employees under the State Merit System and procedures for making budgetary reports to the state.

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[1] Laws of Maryland, 1961, ch. 134.

[2] Laws of Maryland, 1912, ch. 169.

[3] Laws of Maryland, 1952, ch. 14.

Despite its broad, statutory authority with respect to higher education, the State Board of Education did not attempt to influence the operation of the University of Maryland. An arm's length, but cordial, relationship between the State Board of Education and the Board of Regents of the University of Maryland was disrupted in 1960 by the recommendations of the Warfield Commission which are summarized as follows:

1. That the Frostburg and Towson State Teachers Colleges be converted to liberal art centers of the University of Maryland;

2. That this change be followed by the establishment of additional University centers for commuting students in the Washington-Frederick County area; the Central Eastern Shore; and Southern Maryland;

3. That the undergraduate program at College Park continue to be expanded;

4. That the graduate schools in Baltimore continue to be expanded; and

5. That due emphasis continue to be placed on graduate programs at College Park.[1]

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[1] A Plan for Expanding the University of Maryland, A report of the Governor's Commission to study the Problem of Expansion of the University of Maryland, 1960, pp. 23-24. It was now a Maryland custom to refer to study commissions by the name of the chairman. In this case, Edwin Warfield, III, was the chairman.

These proposals were dropped without being considered by the General Assembly in face of strong opposition by the State Board of Education and the State Superintendent of Schools, Dr. Thomas G. Pullen, Jr., who were joined in their efforts by the Maryland State Teachers Association, the Maryland Congress of Parents and Teachers, and other elements of the education lobby. A new study group, the Curlett Commission, was authorized by the General Assembly as an aftermath of the bitter fight over the Warfield Report.[1]

The Curlett Commission contained among its members Dr. Pullen and Dr. Wilson H. Elkins, President of the University of Maryland. Their participation undoubtedly helped lead to the peaceful adoption of the basic recommendations of the Curlett Commission by the 1962 General Assembly. These recommendations are summarized as follows:

1. That present facilities of the University of Maryland be expanded;

2. That the community college movement remain under the direction of the State Board of Education;

3. That the State Teachers Colleges--Bowie, Coppin, Frostburg, Salisbury, and Towson--and Morgan State College be placed under the control of a new Board of Trustees of the State Colleges, and that the teachers colleges be converted

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[1] Laws of Maryland, 1961, Joint Resolution 26.

to multi-purpose state schools; and

4. That an Advisory Council for Higher Education be created, composed of representatives from all public institutions of higher learning in the State.[1]

These recommendations were enacted with dispatch at the 1963 session of the General Assembly, except that Morgan State College retained a separate board until 1967 under the conditions of the legislation.[2] The Curlett Commission labeled the new organization of higher education as a "tri-partite" system of institutions--a state University, a state college system, and a community college system.[3] The tri-partite label has remained during the intervening years.

In 1968, the General Assembly created a new State Board for Community Colleges, an act which further eroded the influence of the State Board of Education in the area of higher education.[4]

A resolution by the 1966 General Assembly requested the Governor to appoint a commission to review and revise the

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[1] Public Higher Education in Maryland, 1961-1975, The Report of the Commission for the Expansion of Public Higher Education in Maryland, 1962, pp. 43-49. The chairman of the commission was John N. Curlett, a former President of the Board of School Commissioners of Baltimore City.

[2] Laws of Maryland, 1963, ch. 41.

[3] Public Higher Education in Maryland, p. 43.

[4] Laws of Maryland, 1968, ch. 454.

Maryland school law. Dr. David W. Zimmerman, Deputy State Superintendent of Schools, was named chairman of the commission which, in typical Maryland fashion, became known as the Zimmerman Commission.

In its report issued in 1967, the Zimmerman Commission made the following general conclusion:

> It is the belief of this Commission that the present school law has stood the test of time exceedingly well, largely because of its classical structure and its logical conception. In addition, it has been kept free of minuscule detail, as written in 1916 and as amended thereafter. Interpretation has been provided by the courts, by the bylaws of the State Board and by rules and regulations at the local board level. . . . Despite its classic structure and the fact that it has withstood the test of time reasonably well, changes in Article 77 are now in order. Even the most classic architectural edifice needs renovation from time to time.[1]

Thus, the Zimmerman Commission judged the 1916 foundation to be sound and exercised judicious restraint in limiting itself to a basic job of housekeeping and reorganization. Obsolete dates and references to terms such as outhouses and water closets were eliminated; student suspension and dismissal practices were updated in light of modern thinking regarding due process; and duplicated subject matter was combined.

The Zimmerman Report was adopted with little debate or change by the 1969 General Assembly.[1] The Act of 1969 also made the law for higher education a separate article in the Annotated Code of Maryland--Article 77A.[2] Thus, Maryland school and college law retained the basic features of the 1916 act for elementary and secondary education and the 1963 act for higher education--with a modern, streamlined format.

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[1] Report of the School Law Revision Commission, Baltimore, 1967, pp. 6, 7.

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[1] Laws of Maryland, 1969, ch. 405.

[2] *Ibid.*

History of the University of Maryland

The term "University of Maryland" has referred to several institutions and combinations of institutions at various times since 1874, but the present institution bearing that name did not come into existence until 1920.

In 1784 the General Assembly declared St. John's College, in Annapolis, and Washington College, in Chestertown on the Eastern Shore, ". . . to be one university by the name of the University of Maryland . . ." combined under ". . . one supreme legislative and visitatorial jurisdiction."[1]

The 1805 General Assembly nullified the Act of 1784 and St. John's College and Washington College continued as private institutions, a status they still hold today. The first University of Maryland had failed.[2]

In 1807 a faculty-owned College of Medicine was founded in Baltimore City and, in 1812, the institution was rechartered as the University of Maryland. In 1823 a Law Institute was added but the University of Maryland continued as a private institution.[3]

The state assumed control of the University of Maryland in 1826 in a manner which to George H. Callcott, Vice Chancellor for Academic Affairs for the University of Maryland, "seemed almost vindictive." He wrote as follows of the state take-over:

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[1] Laws of Maryland, 1784, ch. 37.

[2] George H. Callcott, A History of the University of Maryland (Baltimore: Maryland Historical Society, 1966), p. 14.

[3] Ibid., pp. 16, 17.

> . . . the new charter made plain that the professors were hired employees of the trustees, without tenure, replaceable at will and possessing no voice in the institution's management.[1]

The reaction of the faculty was predictable. Litigation was instituted based on the landmark Supreme Court Case, Dartmouth College v. Woodward (1819),[2] the faculty won, and the General Assembly of 1839 ordered the university to be returned to the faculty as owners. Thus the University of Maryland once again became a private institution.[3]

The Maryland Agricultural College was chartered by the 1856 General Assembly. Although it received an annual appropriation of $6,000 from the legislature,[4] it was owned by stockholders who were in the main farmers. The institution was located near the Washington-Baltimore Turnpike and a railroad station in an area near the District of Columbia which was later to be named appropriately College Park. The college floundered as it attempted to operate during the Civil War, and it finally closed its doors in 1866.[1]

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[1] Ibid., p. 54.

[2] Dartmouth College v. Woodward, 4 Wheat. (U.S.) 518 (1819).

[3] Callcott, A History of the University of Maryland, pp. 74-75.

[4] Laws of Maryland, 1856, ch. 97.

In 1864 the General Assembly accepted public land funds under the Morrill Land Grant Act. Callcott wrote of the dismal management of this grant:

> Since there was little available federal land in Maryland, the state received land script, or land title, to federal property scattered through Michigan, Wisconsin, Nebraska, and Kansas. Dismayed at the prospect of negotiating individual sales, defending titles and paying taxes on the land, Maryland impatiently sold its entire tract to an Ohio speculator for 53-1/2 cents an acre, receiving a total return of $112,504. It was one of the least profitable dispositions of land made by any state.[2]

Dr. Libertus Van Bokkelen, the energetic Superintendent of Public Instruction, exerted his leadership in 1865 to encourage the General Assembly to enact a bill which would have united the Maryland Agricultural College, St. John's College, Washington College, and a struggling undergraduate branch of the University of Maryland in Baltimore into a new University of Maryland. Although the legislation was passed, the venture died because of lack of an appropriation to buy the institutions from their owners.[3]

Dr. Van Bokkelen returned to the General Assembly in 1866 with a plan under which the state bought half ownership of the

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[1] Callcott, A History of the University of Maryland, pp. 131-67

[2] Ibid., pp. 166-67.

[3] Ibid., pp. 169-70.

Maryland Agricultural College. The stockholders retained seven of the eleven seats on the Board of Trustees. This act also satisfied the responsibility of the state in qualifying for the grant under the Morrill Act. The Maryland Agricultural College reopened in 1867 and struggled until a new fiscal base was provided by the Second Morrill Act in 1890. By 1892 the college had produced throughout its struggling existence a total of seventy graduates.[1]

It was not until 1916 that the state assumed full control of the Maryland Agricultural College and renamed it the Maryland State College.[2] By 1919 the college had been organized into seven schools: Agriculture, Engineering, Arts and Sciences, Chemistry, Education, Home Economics, and Graduate.

The growing stature of the college attracted new interest of the private University of Maryland in Baltimore which was having great difficulty in maintaining an undergraduate branch to provide preparatory curricula for its professional schools.[3]

The University of Maryland, basically as it is organized today, was established by act of the legislature in 1920 through the merger of the Maryland State College in College Park with the privately owned University of Maryland in Baltimore. The combined institution became totally state owned, and no members of the Board of Regents of the former university were placed on the new governing board.[1]

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[1] Ibid., pp. 170, 177, 191, 197.

[2] Laws of Maryland, 1916, ch. 372.

[3] Callcott, A History of the University of Maryland, pp. 252, 279.

The University of Maryland has since grown to be one of the largest state institutions in the nation. It has campuses in Baltimore County and in Somerset County, in addition to the original campuses at College Park and in Baltimore City. There has been a paucity of legislation, in recent years, dealing with the University of Maryland, probably because the Autonomy Act of 1952 conferred extraordinary power upon the Board of Regents. This special status and the current pattern of organization of the university will be discussed in detail in the next chapter.

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[1] Ibid., p. 279.

CHAPTER III

AUTHORITIES AND FUNCTIONS OF STATE BOARDS

An Overview

Although the Constitution of Maryland mandates the establishment and maintenance of "a thorough and efficient System of Free Public Schools," it is silent on the subject of governance of this system.[1]

Thus, the governing boards for the systems of elementary and secondary education, the University of Maryland, the state colleges, and the community colleges are creatures of the General Assembly.

Since the boards of governance of the education enterprise in Maryland were created at the pleasure of the General Assembly, they may be altered or abolished at the pleasure of the Assembly. While no governing board for elementary and secondary or higher education has been abolished since 1868, the composition and scope of authority of such boards have been altered frequently by the General Assembly.

In Purnell v. State Board of Education (1915), the Court of Appeals clearly labeled the State Board of Education as being:

> . . . legislative creation, and no questions

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[1] Const. of Md. art. VIII, sec. 1.

> can now be raised in this State as to the power of the Legislature to modify, control or abolish it, embracing therein the power to change the manner of appointment of its members, for this Court has many times expressly emphasized this.[1]

Despite the Autonomy Act of 1952, which gave the Board of Regents of the University of Maryland extraordinary power of internal governance, a Circuit Court Case, Whitworth v. Cole (1954), made it clear that the General Assembly retained its "right of inspection and inquiry."[2] This case was not heard by the Court of Appeals.

As noted in the historical review, as recently as 1960, the State Board of Education and the Board of Regents of the University of Maryland shared nearly total responsibility for governance of public education in the state. The State Board of Education had the legal responsibility for the teachers colleges and fostered and controlled community colleges through local boards of education. The Board of Regents governed the existing College Park, Baltimore City, and Princess Anne (Somerset County) campuses of the University of Maryland.

In 1963, a new Board of Trustees of the State Colleges was created as these institutions became multipurpose state colleges. A new State Board for Community Colleges was created in 1969.

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[1] Purnell v. State Board of Education, 125 Md. 266, 270 (1915).

[2] Whitworth v. Cole, Circuit Court for Talbot County, Daily Record (December 13, 1954).

The "tripartite" system of higher education - community colleges, the state colleges, and the University of Maryland - was to be voluntarily coordinated by representatives sitting on the Advisory Council for Higher Education upon its establishment in 1963. The Advisory Council has been renamed, reconstituted, and redefined during the intervening years, but it has not yet performed as a coordinationg agency. The 1972 General Assembly amended the law pertaining to the Maryland Council for Higher Education to give this body coordinating power.[1] (The word "Advisory" was eliminated from the name of the agency in 1968.) As discussed later in this chapter, it remains to be seen how much coordinating authority the council has or exercises by virtue of the 1972 act.

The elementary and secondary public school program remains under the control of the State Board of Education. Governance of public higher education is fragmented.

State Board of Education

The State Board of Education is composed of seven members who are appointed by the Governor for staggered terms of five years. These appointments are not subject to approval by the Senate. Board members must be citizens of the State of Maryland.

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[1] Annotated Code of Maryland, art. 77A, sec. 30.

Teachers and students are not eligible for appointment to the board. No educational or occupational qualifications are specified by the law which merely declares that members of the board ". . . shall be appointed solely because of their character and fitness . . . ." Board members are eligible for reappointment but are limited to two consecutive terms. A board member may be removed by the Governor for immorality, misconduct in office, incompetency, or willful neglect of duty, providing the charges have been placed in writing and the accused member has been given the opportunity of having a public hearing with counsel.[1]

By law, the board is required to hold an annual meeting in July, at which time the election of officers is held, and three other regular meetings during the course of the year. In practice, the board meets monthly to pursue a growing agenda. The board elects its own officers, a president and a vice president, annually from among its members. Board members receive no salary but are reimbursed for actual traveling and other necessary expenses of attending meetings and performing other official duties.[2]

While the responsibilities of the State Board of Education in the field of higher education have been greatly diminished by legislative acts during the past decade, the power of the board with respect to elementary and secondary education has remained intact. The Maryland school system is highly centralized with 23 county boards of education coming under the direct authority of the State Board of Education. The statutory autonomy of the Baltimore City School System is discussed in the next chapter. The number of basic administrative units in the nation in 1931-32 totaled 127,422; this figure had declined to 17,036 in 1972-73. Only two states, Hawaii and Nevada, have fewer local school districts; and while school district consolidation has received great emphasis throughout the nation, four states, Illinois, Nebraska, Texas, and California, still have in excess of 1,000 school districts. Nebraska has the dubious distinction of being the leader with 1,406 districts.[1]

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[1] *Ibid.*, art. 77, sec. 3.

[2] *Ibid.*, art. 77, sec. 4.

Although the terms "State Department of Education" and "State Board of Education" are often used interchangeably by the public, Maryland Law is clear in making the proper distinction:

> Educational matters affecting the State and the general care and supervision of public education shall be entrusted to a State Department of Education, at the head of which shall be a State Board of Education.[2]

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[1] Estimates of School Statistics, 1972-73 (Washington: National Education Association, 1971), pp. 6 and 24.

[2] Annotated Code of Maryland, art. 77, sec. 2.

Quite simply, the State Board of Education consists of laymen appointed by the Governor; the State Department of Education is comprised of the State Superintendent of Schools and his professional staff who are appointed by the board.

The broad and general authority of the State Board of Education is conveyed by the General Assembly in a single section of Article 77, as follows:

> The State Board of Education shall, to the best of their ability, cause the provisions of this article to be carried into effect. They shall determine the educational policies of the State; they shall enact bylaws, rules and regulations for the administration of the public school system, which when enacted and published shall have the force of law. For the purpose of enforcing the provisions of this article, and the enacted and published bylaws, rules and regulations of the Board, the State Board of Education shall, if necessary, institute legal proceedings. The State Board of Education shall, without charge and with the advice of the Attorney General of Maryland, explain the true intent and meaning of the law, and shall decide all controversies and disputes that arise under it, and their decision shall be final; and the secretary of the State Board of Education shall have authority to administer oaths, in any part of the State, to witnesses in any matter pending before said Board.[1]

It is important to note that the legislature has been extremely careful in changing this basic delegation of power through the years. The history of this statute dates back to 1870 when the General Assembly adopted language which was remarkably similar to that which exists today.

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[1] *Ibid.*, art. 77, sec. 6.

In 1872, the General Assembly changed the name of the State Board of School Commissioners to the present designation of State Board of Education and spelled out the authority to enact bylaws ". . . not at variance with this article, which when enacted and published, shall have the force of law."[1]

Stress is placed on the basic constancy of this section on authority because the great majority of cases reaching the Court of Appeals has involved the interpretation of this general power of the State Board of Education. Maryland cases dating back to 1879 are still cited in current times to justify certain actions of the State Board of Education.

Wiley v. Board of County School Commissioners (1879), involving a high school districting dispute in Allegany County settled by the State Board of Education, is an excellent example of the impact of case law. This case described the "visitatorial power"[2] of the State Board of Education in detail, as follows:

> . . . the State Board of Education have a visitatorial power of the most comprehensive character, and such power is in its nature, summary and exclusive. It is to obviate the consequences of disputes or contentions among

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[1] Laws of 1872, ch. 377.

[2] Through the years, the Court of Appeals has used both "visitatorial" and "visitorial" in describing this broad authority. The term does not appear in Article 77.

> those entrusted with the administration of the public school system, or between the functionaries and the patrons or pupils of the schools, that the visitatorial power is conferred; and wherever that power exists, and is comprehensive enough to deal with the questions involved in a controversy, courts of equity decline all interference, and leave the parties to abide the summary decision of those clothed with the visitatorial authority.
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> . . . so long as such body of functionaries confine themselves within the limits of the power delegated, the court will not interfere with the exercise of their discretionary power, or undertake to determine the question whether the act complained of be wise or unwise, good or bad.[1]

Wiley is one of many instances when the Court of Appeals has drwn upon the pre-revolution English common law in forming its opinion. In Wiley, the Court of Appeals refers to St. John's College v. Toddington (1757) for a basic legal foundation for its ruling regarding visitatorial power of the State Board of Education:

> The visitatorial power, if properly exercised, without expence or delay, is useful and convenient to colleges....the jurisdiction of the Visitor is summary and without appeal to it.[2]

The Court of Appeals in 1879 had no trouble in applying the St. John's College case to the public school system, making this transition as follows:

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[1] Wiley v. Board of County School Commissioners, 51 Md. 401, 402, 404 (1879).

[2] St. John's College v. Toddington, I. Burrow 159 (1757). This English college should not be confused with St. John's College in Annapolis.

> And it may be added, that such power is not more useful and convenient to colleges than to other well organized educational establishments. If every dispute or contention among those entrusted with the administration of the system, or between the functionaries and the patrons or pupils of the schools, offered an occasion for a resort to the courts for settlement, the working of the system would not only be greatly embarrassed and obstructed, but such contentions before the courts would necessarily be attended with great costs and delay, and likely generate much intestine heats and divisions as would, in a great degree, counteract the beneficent purposes of the law.[1]

In Underwood v. Board of County School Commissioners (1906), the Court of Appeals rules that: "There can be no doubt that the State Board had power to advise the County Board, and that it was the duty of the latter to follow the advice of the State Board on the subject.[2]

Does it follow then that the authority of the State Board of Education is absolute and binding without limitations on all concerned with the public school system? While reaffirming the visitatorial power of the State Board of Education on many occasions, the Court of Appeals has nevertheless held that this visitatorial power has limitations.

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[1] Wiley v. Board of County School Commissioners, 51 Md. 401, 406 (1879).

[2] Underwood v. Board of County School Commissioners, 103 Md. 181, 188 (1906).

In School Commissioners v. Henkel (1912), the Court of Appeals rules that the State Board of Education is not empowered by statute to decide "purely legal" matters:

> We do not think it was the purpose of the Legislature in enacting section 11[1] to withdraw the determination of purely legal questions like this from the Courts and commit them to the Board of Education for decision. The real issue in this case is not one involving the proprer administration of the public school system, but it is a question of legal effect of the passage by the Legislature of the Act of 1900 . . .[2]

Likewise, the Court of Appeals has held, in Board of Education v. Cearfoss (1933), the the General Assembly has not conferred upon the State Board of Education the right to decide disputes ". . . relating to the legal effect of a contract between an agency of the school system and an individual for the performance of a specified service."[3]

It has also been made clear by the Court of Appeals, in Coddington v. Helbig (1950), that the State Board of Education cannot exercise its visitatorial power in a corrupt or fraudulent manner:

> The proper administration of the public

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[1] This section is now Section 6 of Article 77--the general power section.

[2] School Commissioners v. Henkel, 117 Md. 97, 102 (1912). This question had also been treated in Duer v. Dashiell 91 Md. 660 (1900).

[3] Board of Education v. Cearfoss, 165 Md. 178 (1933).

> school system of the State is an administrative function to be exercised by the officials to whom the Legislature has delegated authority over the administration of the schools, with the exercise of whose discretion the courts have power to interfere only if it be clearly shown that a contemplated or past act or expenditure is not embraced within the power granted, or, if within the scope of authority delegated, constitutes a corrupt and fradulent use of the power, or such abuse of discretion as to amount to a breach of trust.[1]

A relatively recent Court of Appeals case, Wilson v. Board of Education (1964), reaffirmed the cases discussed above with respect to the visitatorial power of the State Board of Education with the following language:

> The totality of these provisions quite plainly, we think, invests the State Board with the last word on any matter concerning educational policy or the administration of the system of public education. This has been described as a 'visitatorial power of the most comprehensive character.'
>
> There are, of course, some limitations upon the State Board's power. It cannot finally decide pure questions of law. Nor can it exercise its visitatorial power fraudulently, in bad faith, or in breach of trust.[2]

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[1] Coddington v. Helbig, 195 Md. 330-332 (1950).

[2] Wilson v. Board of Education, 234 Md. 561 (1964). This case, in which the State Board of Education reversed a decision by the Board of Education of Montgomery County to release the fingerprint files of teachers to the local police department, cited and reaffirmed ten cases which had previously upheld the visitatorial power of the State Board of Education. In addition to those discussed above, the Court of Appeals cited: Shober v. Cochrane 53 Md. 544 (1880); Zantzinger v. Manning 123 Md. 169 (1914); School Commissioners v. Morris 123 Md. 398 (1914); School Commissioners v. Breeding 126 Md. 83 (1915); and Metcalf v. Cook 168 Md. 475 (1935).

It should be noted that the Court of Appeals was discussing the terms "fraudulently," "in bad faith," and "breach of trust," in hypothetical fashion. In neither the Wilson case nor any other before or since has the State Board of Education been found guilty of acting in such fashions.

The federal courts have also affirmed the visitatorial power of the Maryland State Board of Education. In Robinson v. Board of Education of St. Mary's County, (1956) the Federal District Court for Maryland held:

> Its (the State Board of Education's) decision over matters within its jurisdiction is 'final.' As stated in Wiley v. Board of School Commissioners of Allegany County 51 Md. 401, this is a visitatorial power 'and wherever that power exists, . . . (it) is comprehensive enough to deal with the question involved in an existing controversy . . . .[1]

The Federal District Court also noted exceptions to this power, as follows:

> . . . where the exercise of discretion by the State Board is 'fraudulent or corrupt or such abuse of discretion as to amount to a breach of trust.'[2] Coddington v. Helbig 195 Md. 330 . . . .[2]

The Robinson case also required the plaintiffs to exhaust their "administrative remedy under Maryland law" before expecting a federal court to intervene.[1] This approach was nullified in Quarterman v. Byrd (1971) in which the United States Court of Appeals for the Fourth Circuit upheld the right of a North Carolina high school student to seek redress in a Federal Court when he claimed that his constitutional rights were affected because of a dispute regarding an underground newspaper. The court, in reversing the Federal District Court, held:

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[1] Robinson v. Board of Education of St. Mary's County, 143 F. Supp. 481, 490 (1956).

[2] Ibid., 490.

> The contention that this action, primarily for a declaratory judgment of the unconstitutionality of the school rule, should be stayed pending exhaustion of State remedies is without merit. . . School administrative procedures provide no satisfactory alternative for the resolution of such federal constitutional claim and the plaintiff's choice of a federal forum instead of a state forum . . . is to be respected.[2]

Thus, it appears that when a plaintiff alleges that a constitutional right has been violated, he can seek redress in a federal court without exhausting his administrative remedy under Maryland law. In other words, under such a condition he may bypass administrative hearings as well as hearings before local and state boards. Already, there is evidence that this new stance by the federal courts is causing a rapid increase in the frequency with which boards of education are facing court suits.

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[1] Ibid., 481, 482.

[2] Quarterman v. Byrd, 453 F. 2d 54 (4th cir. 1971).

The Zimmerman Commission Report of 1967 was wisely cautious in its treatment of the section prescribing the general power of the State Board of Education.[1] Essentially, the 1969 general revision of the law amended this section to give the State Board of Education power to enact "rules and regulations" as well as bylaws and to require it to seek the "advice of the Attorney General of Maryland" in deciding disputes and controversies.[2] The General Assembly treated this subject exactly as recommended by the Zimmerman Commission.

This means that the case law cited above on this subject, beginning with St. John's College v. Toddington (1757), is still pertinent today. Although it is obvious that State courts have generally declined to intervene in disputes which are within the jurisdiction of the State Board of Education, this impressive body of case law has not totally discouraged complainants from taking the Board to court. The courts are often asked to rule if the state board had indeed acted fraudulently, in bad faith, or in excess of its discretion, even though consistently the courts have decided that the board did not act thusly.

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[1] The reader is cautioned that the sections of Article 77 were renumbered as a result of the Zimmerman Commission Report. The pre-1968 section on "duties" was numbered Section 21; it is currently Section 6. In researching older cases, the substance of the section rather than the number is the controlling factor.

[2] Report of the School Law Revision Commission, pp. 50-51.

Two recent developments--(1) collective bargaining between teacher organizations and their local boards and (2) the emphasis of due process rights of teachers and students--have greatly increased the frequency of requests for hearings before the State Board of Education. As a result of this increased hearing activity, the State Board of Education passed a bylaw in 1971 to provide for a Hearing Examiner procedure:

> The State Board of Education may refer petitions or appeals to a Hearing Examiner to be designated by said Board. Said Hearing Examiner shall hear all such petitions and appeals in accordance with the rules . . . make a full record of same and submit his findings of fact and conclusions of law, recommendations, and records to the State Board of Education . . . . The Board shall review the record and findings and render a final decision in the case. The Board may allow the parties in the controversy the opportunity to make argument before it, prior to the rendering of a final decision.[1]

Since 1971, all appeals by teachers to the State Board of Education have been heard preliminarily by a Hearing Examiner.

In addition to the general visitatorial power prescribed in Article 77, Section 6, and cited so frequently in judicial decisions, the General Assembly has conveyed upon the State Board of Education numerous specific duties and powers which are summarized as follows:

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[1] The Public School Laws of Maryland (Baltimore: State Department of Education, 1970), pp. 274-276. This publication includes the Code of Bylaws. Annual supplements are published.

1. Enactment of bylaws, rules, and regulations. Since 1898, the General Assembly has given the State Board of Education the right to enact bylaws ". . . not at variance with this article (Article 77), which when enacted and published, shall have the force of law."[1] In the general revision of the law in 1969, this power was amended to include the enactment of "rules and regulations."[2]

In sheer length, the Code of Bylaws of the Maryland State Board of Education exceeds the school statutes passed by the General Assembly in Article 77.[3]

More important than length, of course, is the subject matter treated respectively by legislative enactments and bylaws. Although exceptions exist, the General Assembly has generally left instructional matters for treatment by the State Board of Education through bylaws. For example, all details concerning teacher certification, curriculum, accreditation, and pupil records are covered in bylaws of the board. The legal standing of such bylaws was succinctly affirmed in Metcalf v. Cook (1935) which stated: "Upon publication the by-law acquired the force of law."[1]

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[1] Laws of Maryland, 1898, ch. 221.

[2] Laws of Maryland, 1969, ch. 405.

[3] The Public School Laws of Maryland, 1970, pp. 273-365. This comparison includes the 1971 Cumulative Supplement and special publications of bylaws, e.g., Requirements for Certificates for Administrators, Supervisors, and Teachers.

2. Appointment of State Superintendent of Schools. The State Board of Education has the exclusive right to appoint the State Superintendent of Schools who serves a four-year term. A State Superintendent of Schools may serve an unlimited number of terms.[2]

3. Approval of professional appointments in State Department of Education. Upon nomination by the State Superintendent of Schools, the State Board of Education appoints all "professional assistants" in the State Department of Education. "Non-professional" personnel are appointed by the State Superintendent "from lists of qualified applicants supplied by the Commissioner of Personnel" (now Secretary of Personnel).[3]

4. Approval and accreditation of private schools and institutions of higher learning. In addition to the authority to establish rules and regulations for the approval and accreditation of all public schools, the State Board of Education is empowered to approve private schools. The law exempts schools operated by "bona fide church organizations" from these accreditations and approval requirements.[4] In practice, however,

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[1] Metcalf v. Cook, 168 Md. 475, 479 (1935).

[2] Annotated Code of Maryland, art. 77, sec. 23. Previous to the model legislation of 1916, the State Superintendent of Schools was appointed by the Governor.

[3] *Ibid*., art. 77, sec. 30.

[4] *Ibid*., art. 77, sec. 12.

many parochial schools seek accreditation by the State Board of Education.

The State Board of Education has the authority to ". . . prescribe the minimum requirements for issuing all certificates and diplomas, and academic, collegiate, professional, or university degrees."[1]

Traditionally, officials of the State Department of Education have not prescribed requirements or approved programs for the University of Maryland, the Johns Hopkins University, or St. Mary's Seminary and University. With these exceptions, the State Board of Education does exercise its accreditation authority with respect to all new institutions of higher learning and all new advanced degree programs at existing institutions. The State Board of Education is represented on all visitation teams of the Middle States Association of Colleges and Secondary Schools which review accreditation, and the results of such reviews are accepted by the State Department of Education as being sufficient reason for continuing state accreditation.[2]

This accreditation responsibility of the board extends to private schools or institutions offering "trade or technical education."[1] In Schneider v. Pullen (1951), a case involving approval of a barber school, this authority of the State Board of Education was upheld by the Court of Appeals.[2]

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[1] Ibid., art. 77, sec. 11.

[2] H. David Reese, Assistant Director, Office of Higher Education and Accreditation, Maryland State Department of Education, interview, September 1, 1972.

5. Additional duties. Other specified duties of the State Board of Education include seeking of public interest in education, investigating educational needs, recommending legislation, prescribing programs of instruction, certificating professional personnel for local school systems, submitting a budget state aid to local systems and for the State Department of Education, and preparing an annual report.[3]

State Superintendent of Schools

The State Superintendent of Schools, who is appointed by the State Board of Education for a term of four years, is the chief executive, the secretary, and the treasurer of the State Board of Education. He must have had not less than two years of "special academic and professional graduate preparation" and not less than "seven years' experience in teaching administration." He may be removed during his term for the same reasons and by the same process that a teacher on tenure is discharged.[4]

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[1] Annotated Code of Maryland, art. 77, sec. 12.

[2] Schneider v. Pullen, 198 Md. 64 (1951)

[3] Annotated Code of Maryland, art. 77, secs. 7, 8, 15, 16, 19, 20, 21.

[4] Ibid., art. 77, secs. 5, 23.

No state superintendent has been thus removed.

The state superintendency has been a stable position, except for the experience of the first superintendent, Dr. Libertus Van Bokkelen, as illustrated below:

1865-1868	Libertus Van Bokkelen
1870-1890	M. Alexander Newell
1890-1900	E. Barrett Prettyman
1900-1920	M. Bates Stephens
1920-1942	Albert S. Cook
1942-1964	Thomas G. Pullen, Jr.
1964-	James A. Sensenbaugh[1]

The State Superintendent has specific statutory responsibilities and duties, in addition to administering those conveyed upon the State Board of Education. These duties are summarized as follows:

1. Enforcement of Article 77 and Bylaws. It is the duty of the State Superintendent of Schools to enforce all provisions of Article 77 and the enacted and published bylaws of the State Board of Education. If necessary, he may withhold ". . . any part or all of any payment to county boards from funds budgeted by the State of Maryland" in the case of any violations of the school law.[2]

2. Approval of local superintendents. Prior to appointing a superintendent of schools, a county board of education must

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[1] _Education in the State: Historical Outlook and Development_, p. 557.

[2] Annotated Code of Maryland, art. 77, sec. 24.

secure the written approval of the appointee by the State Superintendent of Schools.[1]

3. Certification of professional personnel. All professional personnel in the county school systems must be certificated by the State Superintendent of Schools, in accordance with the certification bylaws of the State Board of Education.[2]

4. Approval of educational programs in state institutions. Educational programs conducted in institutions under the supervision of the Department of Juvenile Services, Department of Correctional Services, and the Department of Mental Hygiene, require the approval of the state superintendent.[3]

5. Nomination and appointment of state department personnel. All professional employees of the State Department of Education must be nominated by the State Superintendent of Schools for approval by the State Board of Education. Nonprofessional employees are appointed by the State Superintendent of Schools from a list of qualified applicants supplied by the Secretary of Personnel.[4]

6. Other duties. Statutes also empower the state super-

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[1] Ibid., art. 77, sec. 57.

[2] Ibid., art. 77, sec. 27.

[3] Ibid., art. 77, sec. 28.

[4] Ibid., art. 77, sec. 30.

intendent to conduct conferences for local school personnel; to prepare and publish educational pamphlets; to receive, review, and advise upon various reports required of local boards of education; and to provide visual and auditory aids, educational television, and other instructional aids.[1]

The State Superintendent of Schools also serves ex officio on the Board of Trustees of the State Colleges, the State Board for Community Colleges, the Maryland Public Broadcasting Commission, and the Board of Trustees of the Maryland State Teachers Retirement System.[2]

Maryland Council for Higher Education

The Maryland Council for Higher Education consists of 13 citizens of the state who are appointed by the Governor for staggered six-year terms. These appointments require confirmation by the Senate. The members are not required to possess specific educational credentials; the Governor is instructed to select them ". . . solely by reason of their demonstrated interest in the broad range of higher education, their knowledge and understanding of its needs and problems and their devotion to its cause . . . ." The Governor may not appoint more than two members who have attended the same institution of higher learning. Members may be reappointed. The members serve without pay but "shall be paid their reasonable and necessary expenses when engaged in the discharge of their official duties."[1]

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[1] *Ibid.*, art. 77, secs. 25, 29.

[2] *Ibid.*, art. 77, secs. 161, 196; art. 77A, secs. 8, 11.

Prior to 1968, the council consisted of nine members. The four additional members appointed in 1968 were required to be representatives of the following institutions and boards: the University of Maryland, the state colleges; the State Board for Community Colleges; and the private institutions of the state.[2]

The law requires only that the council ". . . meet regularly at such times and places as it determines." In practice, the council meets monthly. The council elects its own chairman from its membership and appoints an executive director and such other assistants as the budget allows. The duties of the director are not enumerated by law.[3] The staff of the council is headquartered in Annapolis.

The 1972 General Assembly specified that the council shall perform the following duties:

> (a) It shall be the duty of the Council to coordinated the growth and overall development of higher education in the State, to conduct studies concerning the various aspects of public higher education in the State, to report the result of

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[1] *Ibid.*, art. 77A, sec. 28.

[2] *Ibid.*

[3] Ibid., art. 77A, sec. 29.

its researches, and to make recommendations to the governing boards of the public institutions of higher education and to appropriate State officials with respect to the matters it has considered. The functions of the Council shall include the following:

(1) Prepare programs for the orderly growth and overall development of the State system of public higher education to meet trends in population and the changing social and technical requirements of the economy;

(2) Investigate and evaluate the needs throughout the State for undergraduate, graduate and adult education, for professional and technical training and for research facilities, and present plans and recommendations for the establishment and location of new facilities and programs or for major alterations in existing programs or facilities;

(3) Recommend all new degree programs at the Doctoral, Master's, Baccalaureate, and Associate levels in all public institutions;

(4) Study and make recommendations regarding the Statewide coordination of the activities of the appropriate agencies, and institutions of higher learning, academically, administratively and fiscally, with the objective of achieving the most effective and economical employment of existing education facilities and of fostering a climate of cooperation and unified endeavor in the field of public higher education;

(5) Set standards to be followed by the public institutions of higher education for the reciprocal acceptance of credits earned by students who transfer between said institutions;

(6) Secure, evaluate, compile and tabulate data, statistics, and information on all matters pending before or of interest to the Council, from the agencies and institutions having custody of and responsibility therefor; and these several agencies and institutions shall respond to and comply with any reasonable request of the Council for such data, statistics,

> and information;
>
> (7) Develop plans and programs for interstate and regional cooperation and reciprocal agreements in higher education;
>
> (8) Study and make recommendations regarding the coordination of State and Federal support of higher education;
>
> (9) Make such other studies and reports concerning public higher education as the Governor or General Assembly may from time to time request.
>
> (b) The Council shall submit to the Governor and to the General Assembly each year at the beginning of the session of the General Assembly, an annual report of its activities, including a report of the nature, progress or result of any studies it has undertaken or completed, together with such plans or recommendations respecting public higher education as may be appropriate.[1]

For the first time, in enacting this law, the General Assembly had moved toward a statutory mandate to coordinate public higher education in Maryland. The most significant changes in the duties of the council, as enacted in 1972, are found in (a) and (a) (3) above. Never before had the council been given the responsibility "to coordinate the growth and overall development of higher education in the State" or the power to "recommend all new degree programs at the Doctoral, Master's, Baccalaureate, and Associate levels in all public institutions."

Previous to 1972, the law had made it clear that the council was merely an advisory agency by stating: "Nothing in this title shall be construed as granting to the Council any power other than of an advisory nature."[1] Significantly, this language was changed in 1972 to read: "Nothing in this title shall be construed as granting to the Council any power not expressly provided in this subtitle."[2] The power provided in this revision of the law may prove to be substantial, but to date the council has been cautious in exercising this new authority.

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[1] Ibid., art. 77A, sec. 30.

It is too early to draw conclusions as to how or how quickly the Maryland Council for Higher Education will move toward becoming the coordinating agency for public higher education in Maryland. The 1972 statute established a possible conflict in authority with the State Board of Education which, as noted earlier, has the power to "prescribe the minimum requirements for issuing all certificates and diplomas, and academic, collegiate, professional, or university degrees.[3]

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[1] Laws of 1969, ch. 405.

[2] Annotated Code of Maryland, art. 77A, sec. 32.

[3] Ibid., art. 77, sec. 11

Board of Regents of the University of Maryland

The government of the University of Maryland is vested by statute in a Board of Regents consisting of 15 members. Twelve members of the Board are appointed by the Governor for staggered terms of five years. These members are limited to two consecutive terms, and these appointments are subject to the advice and consent of the Senate. The Maryland Secretary of Agriculture serves ex officio. Two student members are appointed by the Governor for one-year terms. Both graduate and undergraduate students are eligible for appointment. Student members may be reappointed. They have voting privileges.[1]

Members of the board serve without compensation, except for reimbursement for "reasonable and necessary expenses while engaged in the discharge of their official duites."[2] The law does not specify qualifications for members of the board and does not address the subject of removal of members. The Annotated Code is also silent with respect to officers and meetings of the Board of Regents. The Bylaws of the Board of Regents provide that a chairman, vice-chairman, secretary, assistant secretary, treasurer, and assistant treasurer be elected from the membership of the board. Six regular meetings per year are required by the bylaws. The June meeting is specified as the annual meeting. Ten Standing Committees of the board are created by the bylaws.[1]

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[1] *Ibid.*, art. 77A, sec. 15.

[2] *Ibid.*

In 1952, the General Assembly passed an act giving the University of Maryland broad power of self-government. This legislation became known as the Autonomy Act. The key subsection of this statute states:

> (e) Notwithstanding any other provision of law to the contrary, the board of regents shall exercise with reference to the University of Maryland, and with reference to every department of same, all the powers, rights, and privileges that go with the responsibility of management, including the power to conduct or maintain such departments or schools in said University and in such locations as they from time to time may deem wise; and said board shall not be superseded in authority by any other State board, bureau, department or commission, in the management of the University's affairs, with the following exceptions: . . .[2]

Exceptions to this broad delegation of power are summarized as follows:

1. All income of the university must be deposited in the State Treasury or as that office directs.

2. Surplus funds (except from athletic and student fees),

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[1] Bylaws of the Board of Regents of the University of Maryland Sitting as the Regents of the University of Maryland and the State Board of Agriculture (Baltimore: Board of Regents, 1972). The Board of Regents maintains an office with a clerical assistant in the City of Baltimore

[2] Annotated Code of Maryland, art. 77A, sec. 15.

at the end of the fiscal year, may be spent only with permission of the Board of Public Works.

3. Expenditures and accounts of the university are subject to legislative audit.

4. An annual report, and other requested information, shall be made available to the Board of Public Works and the General Assembly.

5. The university shall submit its request for appropriations in detail to the Department of Budget and Procurement.

6. While the university may appoint classified (non-professional) employees ". . . without being in any manner subject to or controlled by the provisions of the . . . 'Merit System' . . ." all such employees thereafter have the rights and privileges of Merit System employees.[1]

In addition to the extraordinary autonomy granted by the 1952 legislation, the General Assembly has specifically granted the university the following authority:

1. To operate campuses (in addition to the College Park Campus) within the geographical confines of Baltimore County, Baltimore City, the central Eastern Shore area.[2] To date, the university has not opened branches in the latter three areas. Another section of the law gives the university permission to

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[1] Ibid.

[2] Ibid., art. 77A, sec. 18.

operate its branch at Princess Anne (lower Eastern Shore), the University of Maryland Eastern Shore.[1]

2. To issue bonds for capital improvements on a self-liquidating basis.[2] This authority applies, for example, to the construction and financing of dormitories.

3. To fix, revise, charge, and collect fees from students and other persons using the services or facilities of the university.[3]

4. To pursue its responsibilites with freedom from taxation.[4]

By comparison with the State Board of Education, the duties and power of the University of Maryland, as specified in the Annotated Code of Maryland, are considerably more general. Likewise, the Court of Appeals has never ruled with respect to the authority of the Board of Regents, whereas the court has, on frequent occasions, defined the powers of the State Board of Education.

The Autonomy Act of 1952 has been tested only at the Circuit Court level. In Whitworth v. Cole (1954), the Circuit Court of Talbot County ruled that this act by the General

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[1] Ibid., art. 77A, sec. 27V.

[2] Ibid., art. 77A, sec. 20

[3] Ibid., art. 77A, secs. 22, 27E

[4] Ibid., art. 77A, sec. 24.

Assembly made ". . . the Board of Regents of the University of Maryland autonomous with reference to every department of the University."[1]

The Circuit Court noted, however, that some supervision of the university by the executive and legislative branches of the state government was preserved:

> There is no doubt, that in spite of the autonomy of the management of the University of Maryland as evidenced by the Autonomy Act, the legislature intended some supervision by the executive branch of the State (the Board of Public Works) and by the legislative branch of the State (any member of the General Assembly) acting in their official capacity and for an official purpose. Any other construction of this specific exception would negative the clear intent of the act as a whole.[2]

George Callcott has presented a practical interpretation of the Autonomy Act:

> The bill gave the University the power to make its purchases, control its employees or alter its curriculum without supervision or checks by any state agency or by any elected official.[3]

Delegation of Authority by Board of Regents

The University of Maryland claims to have the twelfth largest institution of higher learning in the nation with a statewide enrollment of 54,788. The university operates four campuses--College Park, Baltimore City (the professional schools), Baltimore County, and Eastern Shore--and a University College which consists of the evening and overseas programs. The operating budget for 1972-73 exceeded $210,000,000.[1]

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[1] Whitworth v. Cole, Circuit Court of Talbot County, Daily Record, December 13, 1954.

[2] Ibid.

[3] George Callcott, The History of the University of Maryland, p. 343.

With this size and scope of operation, the Board of Regents obviously has found it necessary and desirable to delegate a considerable portion of its broad authority to the president of the university. In turn, the president has delegated much of this power to appropriate individuals in the university community. The resulting procedures have become the operating law of the university to a much greater degree than has the general body of statutes found in Article 77A of the Annotated Code.

The administrative style of the current president of the University, Dr. Wilson H. Elkins, leans heavily toward decentralization of authority.[2] In 1970, the board established a chancellor system. Currently, five chancellors--College Park, Baltimore City, Baltimore County, and Eastern Shore campuses and University College--report to the president. The president, four vice presidents, and the five chancellors form a President's Administrative Council which meets generally on a weekly basis.

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[1] University of Maryland Facts (College Park: Publications Office, 1974).

[2] Callcott, The History of the University of Maryland, pp. 313-403. The administrative style of Dr. Elkins is contrasted in detail with that of his predecessor, Dr. H.C. Byrd. Dr. Byrd was president from 1935 to 1954. Dr. Thomas B. Symons served as acting president for part of 1954 when Dr. Byrd ran unsuccessfully for Governor. Dr. Elkins was appointed President in 1954 and continues in that position. While Callcott recognizes Dr. Byrd's contributions toward the growth of the University, he generally characterizes his administration as being monolithic in nature.

The University is currently in the process of far-reaching administrative reorganization which is resulting in further decentralization and delegation of the authority of the Board of Regents and the president.[1] With the move toward decentralization and faculty, staff, and student involvement in governance, the Board of Regents generally concerns itself with the budget, investment of endowment funds, administrative appointments, applications for foundation awards, construction contracts, athletics, and bequests.[2]

Board of Trustees of the State Colleges

The Board of Trustees of the State Colleges consists of nine members. Eight of these members are appointed by the Governor; the State Superintendent of Schools is designated by law as the ninth member. The eight appointees serve nine-year, staggered terms and are eligible for reappointment. Confirmation by the Maryland Senate is not required.

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[1] George Callcott, Vice Chancellor for Academic Affairs, College Park, interview, August 18, 1972.

[2] Minutes of the Board of Regents, September, 1970-May, 1972.

Members of the Board are appointed ". . . solely because of their character and fitness, their interest in the cause of public higher eduation, and their knowledge of its problems . . . ." No ciitizen ". . . who is in any way subject to its authority" shall be appointed to the Board. Board members serve without pay, but are reimbursed ". . . for reasonable and necessary expenses while engaged in the discharge of their official duties."[1] The law is silent with respect to removal of members.

By law, the board elects its own chairman from its membership.[2] In practice, a viçe chairman is also elected annually. The board has imposed upon itself the requirement of quarterly meetings. In recent years, the board has actually met six to ten times annually.[3]

The Board of Trustees is the governing body for six state colleges--Bowie, Coppin, Frostburg, Morgan, Salisbury, and Towson.[4] The University of Baltimore will become an operational state institution, effective January 1, 1975, under the control of the Board of Trustees for the State Colleges.[1] The Maryland Council for Higher Education has recommended that St. Mary's College, a four-year state institution located in St. Mary's County in Southern Maryland, be placed under the jurisdiction of the Board of Trustees of the State Colleges.[2] An identical recommendation has been made for the past five years, but the General Assembly has declined to take this step. The institution continues to be governed by a Board of Trustees of 12 members appointed by the Governor.

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[1] Annotated Code of Maryland, art. 77A, sec. 11.

[2] *Ibid.*, art. 77A, sec. 12.

[3] *Annual Reports* (Annapolis: Board of Trustees of the State Colleges, 1967-1971).

[4] Annotated Code of Maryland, art. 77A, sec. 11.

The General Assembly has given the Board of Trustees of the State Colleges ". . . all the powers, rights and privileges attending the responsibility of their management."[3] This general authority of the Board was upheld by the Court of Appeals in Ball v. Board of Trustees (1968) when Morgan State College was permitted to release employees who had been replaced by a catering service. The Court stated:

> We think the Code . . . gives the Board authority to abolish positions in a department unders its supervision and control by the language which invests it with '. . . all provisions, rights and privileges attending the responsibility of their management. . .'[4]

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[1] Ibid., art. 77A, sec. 14M.

[2] Annual Report and Recommendations (Annapolis: Maryland Council for Higher Education, 1972), p. 2.

[3] Annotated Code of Maryland, art. 77A, sec. 12.

[4] Ball v. Board of Trustees, 251 Md. 685 (1968).

Specific duties conveyed by law to the Board are summarized as follows:

1. Appointment of executive director. This official serves as the chief executive officer of the Board.

2. Selection of college presidents. The qualifications and the tenure of a college president are left to the discretion of the board.

3. Approval of appointment or separation of personnel. All appointments of professional personnel are acted upon by the board, with the recommendation of the president of the college concerned. Classified employees are appointed by the presidents in terms of the provisions of the State Merit System.

4. Authorization of curricula. Major changes in instructional programs must be submitted to the board by a college president. Each college is required by law to maintain a program of teacher education.

5. Establishment of regulations for students. The board prescribes entrance requirements, sets tuition and fee rates, and determines the length of academic sessions.

6. Receipt of gifts, donations, and grants. The board has the right to invest funds received as gifts, donations, and grants.

7. Adoption of budgets. The presidents prepare the budgets for the individual colleges; the combined budget is presented to the board by the executive director.

8. Preparation of Annual Report. This report is submitted to the Governor and General Assembly prior to January 1 annually.[1]

9. Management of real property of colleges. The property of the state colleges is titled in the name of the State of Maryland ". . . to the benefit and use of the Board of Trustees of the State Colleges."[2]

10. Issuance of bonds. Self-liquidating bonds for auxiliary facilities, e.g., dormitories and student unions, may be issued by the board.[3]

Delegation of Authority to Executive Director and to State College Presidents

The position of executive director to the Board of Trustees of the State Colleges is established by law; this official serves at the pleasure of the board.[4] The office of the executive director and his staff is located in Annapolis.

As the chief executive officer of the board, the executive director has the following statutory duties:

1. To keep a record of all meetings of the board.
2. To maintain and preserve all books, records, and

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[1] Annotated Code of Maryland, art. 77A, sec. 12.

[2] Ibid., art. 77A, secs. 12, 12I.

[3] Ibid., art. 77A, sec. 12A, 12J.

[4] Ibid., art. 77A, sec. 12.

papers of the Board.

3. To perform such duties as the board may prescribe.[1]

The board has prescribed for its chief executive officer additional duties which are summarized as follows:

1. To provide the board with an objective appraisal of the needs of the college.

2. To visit the various colleges for the purpose of advising, reviewing, and interpreting policies of the board.

3. To represent the board before the General Assembly.

4. To interpret and administer overall board policies.

5. To submit to the board reports, studies, statistical information, and the capital and operating budgets of the state colleges.

6. To serve as secretary to the board.[2]

The president of a state college, who also serves at the pleasure of the board, has the following statutory responsibilities:

1. To effect the discipline and successful conduct of the college.

2. To administer and supervise all its departments.

3. To recommend to the board the appointment or

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[1] Ibid.

[2] Laws Relating to and Governing Policies and Procedures of the Board of Trustees of the State Colleges of Maryland (Annapolis: Board of Trustees of the State Colleges, 1973), pp. IV-1, IV-2.

separation of all professional employees.

4. To propose curricular changes for the approval of the board.

5. To make an annual report to the board.[1]

Additionally, the Board of Trustees has conveyed upon each president the following duties:

1. To prepare annual capital and operating budgets.

2. To consult with the Board of Visitors[2] concerning programs and plans for the college, the capital and operating budgets, and community relations.

3. To recommend to the board all advancements in faculty rank.

4. To appoint all calssified personnel from lists furnished by the Secretary of Personnel of the State of Maryland.[3]

Although approval of academic matters by the Board of Trustees tends to be perfunctory, the board does officially concern itself with many more instructional details than does the Board of Regents of the University of Maryland.[1]

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[1] Annotated Code of Maryland, art. 77, sec. 12.

[2] Each college has a Board of Visitors which is appointed by the Governor. These boards will be discussed in detail in Chapter IV.

[3] Laws Relating to and Governing Policies and Procedures of the Board of Trustees of the State Colleges of Maryland, pp. V-1, V-2.

Campus Governance.--The president of each college has the general responsibility for involving the faculty in governance. This important duty is referred to only obliquely in a policy of the Board of Trustees: "Each college shall include in its faculty handbook a written statement concerning the role of its faculty members in the governance of that college."[2] The process of faculty participation in governance is in varying stages of evolution at the six colleges.

Systemwide Sentate.--The Board of Trustees has recognized a systemwide Faculty Senate ". . . as the official voice of the faculties of the state colleges of Maryland . . . ." The systemwide Faculty Senate is authorized by the board ". . . to consider matters concerning systemwide policies and to make appropriate recommendations thereon to the Board . . . ."[3]

The systemwide Faculty Senate consists of "senators" representing each college on the following bases:

1. Two senators elected from each college regardless of its size; and

2. One additional senator elected from each

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[1] This generalization is based upon perusal of minutes of both boards for 1970-1972.

[2] *Laws Relating to and Governing Policies and Procedures of the Board of Trustees of the State Colleges of Maryland*, p. VII-7.

[3] *Ibid.*, p. VII-2.

> college for every two hundred faculty members or fraction thereof beyond two hundred in such college.[1]

State Board for Community Colleges

The State Board for Community Colleges, the newest of the State boards for higher education, consists of eight members. Seven of these members are appointed by the Governor. The State Superintendent of Schools is designated by law as the eighth member.

Six of the seven appointed members of the board serve six-year, staggered terms and are eligible for reappointment. The seventh member appointed by the Gocernor must be a student in good standing at a public community college in Maryland. This appointment is for one year. Except for the student member, no educational requirements are specified by law for membership on the board; the Governor is required merely to select members ". . . from among citizens of the State who are known for their interest in civic and public affairs and for their knowledge and perception in educational matters." The appointments require the approval of the Maryland Senate.[2] The law does not treat the subject of compensation for members of the board. In practice, members are not paid but are reimbursed for all necessary expenses, as is the case with all other state educational boards. The law is also silent regarding removal of board members, meetings, and the election of officers. The board has elected a chairman and vice chairman annually. It meets monthly.[1]

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[1] *Ibid.*, p. C-1.

[2] Annotated Code of Maryland, art. 77A, sec. 8.

As noted previously, the State Board of Education previously fulfilled the function now performed by the State Board for Community Colleges. During 1968-69, the State Board for Community Colleges served in an advisory capacity to the State Board of Education. The latter board bowed out of the community college picture on June 30, 1969, and the new State Board for Community Colleges was vested with the following powers, duties, and function.

1. To establish general policies for the operation of the state's community colleges;
2. To conduct studies on the problems of community college education;
3. To assist the community colleges individually or collectively by providing expert professional advice in all areas of their activities;
4. To review and advise upon all curriculum proposals for newly established community colleges and for proposed major additions to or modifications of programs in existing community colleges;
5. To recommend, review and advise upon pro-

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[1] Eugene J. Sullivan, Specialist, State Board for Community Colleges, interview, July 26, 1972.

posals for the establishment of new community colleges;

6. To coordinate relationships among the community colleges to assure the widest possible educational opportunities for the students of the State and the most efficient use of funds;
7. To facilitate the transfer of students between the community colleges and the University of Maryland, the state colleges, and other institutions of higher education;
8. To coordinate relationships between the community colleges and the state and local public school systems and the private high schools in order to facilitate cooperation with them in guidance and admission of students to the community colleges and to arrange for the most advantageous use of facilities;
9. To establish and maintain a system of information and accounting of community college activities;
10. To provide grants-in-aid for the prompt and adequate planning of new colleges and new programs in existing colleges;
11. To administer the state's program of support for the community colleges;
12. To assist and represent the community colleges in seeking and administering federal monies available to them;
13. To assist the Maryland Advisory (sic) Council for Higher Education in its investigation of needs throughout the state and in its preparation of plans and recommendations for the establishment and location of new facilities and programs relating to the community colleges;

14. To report annually to the General Assembly on the board's activities and the activities of the community colleges.[1]

The board is authorized to appoint a director and additional employees to staff its office. The law simply states that the director shall "carry out" the "day-to-day functions" of the board.[2] The office of the board is located in Annapolis.

The duties of the State Board for Community Colleges relate to sixteen colleges operated by local boards in sixteen counties and the City of Baltimore. Four counties operate a regional institution, Chesapeake Community College, on the Eastern Shore. Baltimore County supports three colleges.[3]

Clearly, the State Board for Community Colleges has a different relationship to local community colleges than the Board of Trustees of the State Colleges has with respect to the individual state colleges. The latter is an operating board; the former is more analogous to the State Board of Education, except that its powers have not been spelled out as broadly by statute or by court decisions. In fact, an opinion by the Assistant Attorney General assigned to the board characterizes its power in the important area of curriculum as "advisory," except for the establishment of "minimum standards" for courses.[1]

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[1] Annotated Code of Maryland, art. 77A, sec.8.

[2] *Ibid*.

[3] *Second Annual Report and Recommendations of the Maryland State Board for Community Colleges* (Annapolis: Maryland State Board for Community Colleges, 1972), pp. V-VII.

The opinion by the Assistant Attorney General was addressed exclusively to the subject of authority for curriculum approval. Neither the Attorney General nor the courts have been asked to rule on the general authority of the State Board for Community Colleges.

As recently as 1971, the board expressed the need for coordination of the community college program and appeared uncertain about its own power, stating in its Second Annual Report:

> In our report last year, this Board recognized that '. . . it is unmistakably clear that the State Board for Community Colleges still faces a major task in establishing policies and procedures for coordinating the individual Community Colleges into a reasonably coherent and uniform system, and a task at least equally as great in simplifying and minimizing the present functional and procedural relationships between the colleges and various agencies of the State. Progress on these tasks is essentially just beginning . . . .'
>
> This Board is disappointed to report that after another year . . . little progress has been possible, either in 'coordinating the individual colleges into a reasonably coherent and uniform system' or in minimizing the excessive functional overlap and duplication among State agencies. In fact, duplication of functions appears to

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[1] Opinion by Martin B. Greenfeld, Assistant Attorney General, September 7, 1971.

> be increasing. This Board is now exploring whether, with our present prerogatives, it will be possible for us to achieve an appropriate operational and coordinating role with respect to the Community Colleges as was apparently intended by the Legislature, or whether further legislative measures may be necessary.[1]

Time will tell whether the neophyte among state educational boards will assume or be granted broad visitatorial powers such as those exercised by the State Board of Education.

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[1] Second Annual Report and Recommendations of the Maryland State Board for Community Colleges, 1971, p. VI.

CHAPTER IV

AUTHORITIES AND FUNCTIONS OF LOCAL BOARDS

Overview

The 23 counties and Baltimore City, which is a separate political entity apart from any county, are the most significant local units of government in Maryland. Incorporated municipalities are subordinate to counties.

Local Maryland school systems have boundaries which are coterminous with those of the 23 counties and Baltimore City. Maryland is recognized nationally as having a county system type of school district organization. The Maryland local school systems are but rarely referred to as "school districts." In Baltimore County, for example, the school system is generally designated as the Board of Education of Baltimore County or as the Baltimore County Public Schools.

The University of Maryland is not included in this chapter because the four campuses of the University do not have local boards. The growing delegation of authority to the chancellor on each campus was recognized in the preceding chapter. The chancellors in turn are increasingly delegating responsibilities to campus governance bodies.

Each of the six state colleges, which are under the control of the Board of Trustees of the State Colleges, has a Board of Visitors appointed by the Governor. The Board of

Visitors of each college is basically an advisory body; the delegation of actual power is from the Board of Trustees to the president to the campus governing body, e.g., an academic council.

St. Mary's College, the only state college which is not under the aegis of the Board of Trustees of the State Colleges, has a separate Board of Trustees.

Local boards for the sixteen community colleges are appointed by the Governor, except in the case of Baltimore City where the Mayor appoints the board. The jurisdictional territory of community colleges is also coterminous with county and Baltimore City boundaries, except for a regional institution, Chesapeake College, which is supported by four Eastern Shore Counties--Caroline, Kent, Queen Anne's, and Talbot.

The General Assembly has granted extensive policy-making or legislative authority to local boards of education and boards of trustees of community colleges. Presidents of the University of Maryland and the state colleges have been delegated broad authority by both the General Assembly and their respective boards. The use of this policy-making power at the local school system or institutional levels has resulted in a plethora of local law which far exceeds in volume the statutes enacted by the General Assembly or the bylaws and regulations adopted by state educational boards. This locally promulgated law may be found in a conglomeration of student and employee handbooks, policy manuals, minutes, collective bargaining agreements, and special publications. Unless locally-adopted policies are superseded by those enacted by the General Assembly or state boards, or are reversed or altered by court decisions or opinions of the Attorney General, they have the full effect of law.

Local Boards of Education

As noted in the preceding chapter, authority for public education in Maryland is greatly centralized by comparison with the organizational patterns of most of the other states. The twenty-four school systems in Maryland compare with a total of 1,406 in Nebraska; yet the pupil population of the public schools of Maryland in 1972-73 totaled 921,235 while that of Nebraska was 328,000.[1]

Maryland has a heavy concentration of pupils in four school systems in the Baltimore-Washington metropolitan areas. In 1972-73, the school systems of Baltimore City, Baltimore County, Montgomery County, and Prince George's County enrolled 607,400 students or approximately two-thirds of the state total.[2]

These four largest Maryland school systems rank among the top 20 school districts in the United States in terms of student enrollments.[1] On the other hand, nine Maryland systems enrolled less than 7,000 pupils each in 1972-73 with Kent County having the smallest enrollment--3,880 students.[2]

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[1] Estimates of School Statistics, 1972-73 (Washington: National Education Association, 1971), pp. 24, 25.

[2] Facts about Maryland Public Education, 1973-74 (Baltimore: State Department of Education, 1971), p. 4.

Currently, 20 local boards of education in Maryland are, by law, appointed by the Governor; three (in Charles, Montgomery, and Prince George's Counties) are elected in general elections; and the Board in Baltimore City is appointed by the Mayor. Washington County will have an elected board, effective January 1, 1975. Howard County will begin phasing in an elected board system beginning in 1975; the transition will not be completed until 1979. The voters of Allegany and Carroll Counties will decide whether to change to elected boards through 1974 referenda. If the Allegany referendum question is voted upon in the affirmative, the elected board will take office on January 2, 1975. If the Carroll referendum is passed, an elected board will be phased in from 1977 through 1980.[3]

The still predominant pattern of appointed local boards in Maryland is atypical. Approximately 85 per cent of the school boards in the United States are elected.[1]

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[1] "Enrollment in the 50 Largest School Systems" (Washington: Research Division, National Education Association, October, 1971), p.1.

[2] Facts about Maryland Public Education, 1973-74, p. 4.

[3] Annotated Code of Maryland, art. 77, secs. 35B, 36A, 36B, and 36D.

All local school boards in Maryland are fiscally dependent upon county governments (the City Government in the case of the Baltimore City Public Schools) for funds to supplement the state and federal aid to education programs. All local governments do, in fact, supplement the state and federal aid programs. While a detailed discussion of school finance is not within the scope of this study, it is interesting to note that in 1972-73 the current (or operating) expenses of Maryland public school systems were financed as follows: Federal--8.5 per cent; State--33.2 per cent; and local--58.3 per cent. These are average figures and the percentage of state aid varies greatly from school system to school system. Garrett County schools, at one extreme, recieved 56.3 per cent of their current expenses from the state, while at the other end of the scale, Montgomery County schools were granted 22.2 per cent of their current expenses by the state. The percentage of federal aid varied from 19.4 per cent in Somerset County to 3.1 per cent in Baltimore County. Cost per pupil (for current expenses) ranged from $1,374 in Montgomery County to $707 in

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[1] Kenneth Buck, Associate Executive Secretary, National School Boards Association, interview, September 6, 1972.

Garrett County.[1] The constitutionality of the Maryland school aid equalization formula is currently being challenged in the Federal District Court for Maryland by a Serrano-type case,[2] Parker v. Mandel (1972).[3] The Maryland Law has provided, since 1971, that the State pay the full cost of school construction.[4]

Types and Methods of Selection

Appointed.--The size of an appointed county board of education is determined by law, according to the following formula:

> 1. School systems with less than 50,000 pupils--five members. A grandfather clause permits seven school systems in this category to retain memberships in excess of five; the Board for Worcester County was increased to a membership of seven by the 1974 General Assembly.
>
> 2. School systems with 50,000-100,000 pupils--seven members.

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[1] Facts about Maryland Public Schools, pp. 20-21. These percentages and dollar expenditures include the State's share of retirement costs but exclude appropriations for pupil transportation. Nearly 100 per cent of the cost of transportation is borne by the State.

[2] Serrano v. Priest, 487 P. 2d 1241 (1971). This California case was the first of many similar cases throughout the Nation which are challenging the lack of equalization in state school finance.

[3] Parker v. Mandel. Judge Alexander Harvey denied defendant's motion for dismissal, June 14, 1972. Ruling distributed in mimeographed form by State Department of Education.

[4] Annotated Code of Maryland, art. 77, sec. 130A.

3. School systems with more than 100,000 pupils--nine members.[1]

The Board of School Commissioners of Baltimore City has nine members who are appointed by the Mayor.[2] This is the same number that the city would be entitled to under the appointive section of the state law.

Members of the 20 local boards which are selected by the Governor are appointed for five-year, overlapping terms. A term begins on July 1 following the appointment and extends until a successor qualifies. No board member may serve more than two consecutive terms. Board members are selected ". . . solely because of their character and fitness and without regard to political affiliation, but no person shall be appointed to a board who is in any way subject to its authority." A local board member may be removed by the State Superintendent of Schools, with the approval of the Governor, for immorality, misconduct in office, incompetency, or willful neglect of duty. Any such charge must be submitted to the accused board member in writing, and he must be given an opportunity to be publicly heard in person or by counsel before the State Superintendent, upon not less than ten days notice.[1]

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[1] *Ibid*., art. 77, sec. 35.

[2] Charter, City of Baltimore, art. VII, sec. 58.

Except for Baltimore County, school board members are appointed at large from a county. In Baltimore County, seven board members must reside in their respective senatorial subdistricts. The other two members are appointed from the county-at-large. Beginning in 1975, eight board members will be required to reside in the eight legislative districts which are in whole or in part in Baltimore County, and one will be a member-at-large. The new system was enacted by the 1974 General Assembly to be congruent with the new reapportionment law.[2]

Appointments to county boards are not subject to approval by the Senate.

Elected.--The sizes of elected boards are specified in separated statutes as reflected in Table I. Elected boards have the same duties and responsibilities conveyed to appointed boards by statute. These boards are also fiscally dependent upon county fiscal authorities and maintain the same legal relationship with the State Board of Education as do appointed boards.

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[1] Annotated Code of Maryland, art. 77, sec. 35. When this section was enacted in 1969, incumbent members who held terms of more than five years, under the previous law, were permitted to complete such terms. Incumbents were also made eligible for an additional term, regardless of the number of terms previously served. Thus, this aspect of the law remains in a period of transition.

[2] Ibid.

Officers, Meetings, and Expenses of County Boards

An appointed county board of education elects a president and a vice president from among its membership at its annual meeting which is held on ". . . the second Tuesday in July, or as near as possilbe thereto in July . . . ."[1]

The number of meetings of a county board is not specified by law, except in Howard County where "twice monthy" meetings are required.[2] The Board of Education of Baltimore County, for example, by custom holds semi-monthly meetings, except during the summer when monthly sessions are scheduled. Many local boards in smaller counties hold monthly meetings.

County boards are permitted to meet in executive sessions to deliberate on ". . . land and site acquisitions, personnel and labor relations . . . ." However, "all final actions of county boards of education shall be taken at a public meeting, the minutes of which shall likewise be public . . . ."[3]

The Zimmerman Commission Report proposed in 1967 that all local board members serve without pay and be reimbursed only ". . . for traveling and other expenses incident to attending

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[1] *Ibid.*, art. 77, sec. 37.

[2] *Ibid.*, art. 77, sec. 36B.

[3] *Ibid.*, art. 77, sec. 37.

TABLE I

Local Boards of Education - Method of Selection, Size, and Term

Local Unit	Method of Selection*	Number of Members	Length of Term-Years**
Allegany	Appointed[1]	5	5
Anne Arundel	Appointed	8[2]	5
Baltimore City	Appointed by Mayor	9[3]	6
Baltimore County	Appointed	9	5
Calvert	Appointed	5	5
Caroline	Appointed	5	5
Carroll	Appointed[4]	6	5
Cecil	Appointed	5	5
Charles	Elected	7	4
Dorchester	Appointed	6	5
Frederick	Appointed	7	5
Garrett	Appointed	5	5
Harford	Appointed	7	5
Howard	Appointed	5	5
Kent	Appointed	5	5
Montgomery	Elected	7	4
Prince George's	Elected	9	6
Queen Anne's	Appointed	5	5
St. Mary's	Appointed	5	5
Somerset	Appointed	8	5
Talbot	Appointed	7	5
Washington	Appointed[6]	6	5
Wicomico	Appointed	5	5
Worcester	Appointed	7	5

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*"Appointed" means selection by the Governor, except in the case of Baltimore City.

**Several boards have members who are currently serving terms with lengths at variance with the standard listed in this column. This was caused by the transition to the new system of appointing boards which was enacted in 1969 by the General Assembly.

[1] Referendum on elected board will be held in September, 1974.

[2] Includes student member without voting privileges--one-year term.

[3] Two non-voting student members are appointed by the board.

[4] Referendum on elected board will be held in Nobember, 1974.

[5] An elected board will be phased in, beginning on January 1, 1975. Six-year terms will be established.

[6] After January 1, 1975, the board will consist of five members, elected at the November, 1974 General Election. The terms will be for four years.

the meetings and transacting the business of the board."[1] The general statute was passed with this language early in the legislative session of 1969.[2] Later in the same session, another bill specified that board members in fourteen counties should be paid "compensation" for "traveling and other expenses" in amounts ranging from $200 to $800 annually.[3] The elected boards are generally compensated at higher rates than are appointed boards. Members of the Board of Education of Prince George's County receive the highest compensation--$7,000 annually for the chairman, and $6,500 annually for the other members.[4] These actions by the General Assembly illustrate the difficulty of maintaining a uniform school code. Legislation which clearly affects but a single county or Baltimore City is generally passed in accordance with the majority vote of the legislators from that subdivision. This is referred to in Annapolis as "legislative courtesy."

Duties of County Boards of Education

As was noted in detail in Chapter II, the county boards of education have played key roles in the development of the

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[1] Report of the School Law Revision Commission, p. 59.

[2] Laws of Maryland, 1969, ch. 405.

[3] Ibid., ch. 775.

[4] Annotated Code of Maryland, art. 77, sec. 36C.

Maryland school system since its modern inception in 1865. The general authority of a local board of education has been enunciated as follows by the General Assembly:

> Educational matters affecting the counties shall be under the control of a county board of education in each county . . . .[1]
>
> The county boards of education are authorized, empowered, directed, and required to maintain throughout their respective subdivisions a reasonably uniform system of public schools designed to provide quality education and equal educational opportunity for all youth.[2]
>
> The county board of education shall to the best of its ability cause the provisions of this article, the bylaws, rules and regulations, and the policies of the State Board of Education to be carried into effect. Subject to this article, and to the bylaws, rules and regulations of the State Board of Education, the county board of education shall determine, with the advice of the county superintendent, the educational policies of the county school system and shall prescribe rules and regulations for the conduct and management of the public schools in the said county school system. Such rules and regulations shall be codified and made available to the public.[3]

In Wilson v. Board of Education of Montgomery County (1964), the Court of Appeals made it clear that the powers of county boards are subordinate to those possessed by the State Board of Education. In Wilson, the Court upheld the State Board of

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[1] *Ibid.*, art. 77, sec. 34.

[2] *Ibid.*, art. 77, sec. 40.

[3] *Ibid.*, art. 77, sec. 41.

Education's right to set aside a resolution by the Montgomery County Board which would have caused the forwarding of fingerprint files of all teachers to the local police department. In upholding the action of the State Board, the Court stated: "Whether wise or unwise, we think the order of the State Board did not exceed its statutory authority."[1]

In addition to the broad authority delegated to a local board of education, the General Assembly has, through the years, granted more specific rights and duties. These specific powers are summarized as follows:

1. Appointment of county superintendent of schools.[2]

2. Appointment, upon the recommendation of the county superintendent, of all certificated and non-certificated personnel. The Board also sets the salaries of all personnel, subject to minimum salaries provided by law and the amount of funds appropriated by the fiscal authorities of the county.[3]

3. Determination of geographical attendance areas for all public schools within the county.[4] The power of a local board

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[1] Wilson v. Board of Education of Montgomery County, 234 Md. 561, 566 (1964).

[2] Annotated Code of Maryland, art. 77, sec. 57. As noted in Chapter III, appointment of a local superintendent of schools is subject to the approval of the State Superintendent of Schools.

[3] *Ibid.*, art. 77, secs. 54, 112, 114.

[4] *Ibid.*, art. 77, sec. 42.

of education to establish school boundaries has not been interfered with by the courts. Such local action is subject to review by the State Board of Education, but this body in the Panhandle Committee v. Board of Education of Baltimore County (1972) took the position that it will intervene only if a local board has been arbitrary or capricious.

4. Adoption of curriculum guides and courses, subject to the bylaws and guidelines established by the State Board of Education.[1]

5. Exercise of right of eminent domain to secure property for school sites. Such action is taken when the owner of the property refuses the final offer of the Board. In such cases, the price of the property is determined by the Circuit Court.[2]

6. Appointment of advisory committees which a local board "may deem necessary to facilitate the . . . programs (of the board) . . . ."[3]

7. Receive donations of sites or buildings.[4]

8. Hear appeals of decisions of the county superintendent of schools.[5]

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[1] *Ibid.*, art. 77, sec. 55.

[2] *Ibid.*, art. 77, sec. 51.

[3] *Ibid.*, art. 77, sec. 49.

[4] *Ibid.*, art. 77, sec. 50.

[5] *Ibid.*, art. 77, sec. 59.

9. Approval and publication of annual report of conditions, accomplishments, and needs of the school system.[1]

County Superintendent--Appointment and Duties

The county board of education with the approval of the State Superintendent of Schools, appoints a local superintendent of schools for a four-year term. A local superintendent is eligible for reappointment to an unlimited number of terms. The appointment must be made during the month of February; the four-year term commences on July 1. In the case of a mid-term vacancy, the new appointment is for a full term of four years.[2]

A local superintendent must hold a certificate for this position issued by the State Superintendent of Schools. Bylaw 617:11 requires the following credentials and experiences for the issuance of a certificate to a superintendent of schools:

a. eligibility for a professional certificate

b. a master's degree from an accredited institution

c. three years of successful teaching experience and two years of administrative and/or supervisory experience

d. successful completion of a two-year program with graduate courses in administration and supervision in an institution or institutions approved by an accrediting agency

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[1] Ibid., art. 77, sec. 121.

[2] Ibid., art. 77, sec. 57.

> recognized by the State Superintendent of Schools; graduate work under section (b) may be applied toward the requirements of this section (d), provided that a minimum of 60 semester hours of graduate work is presented.[1]

The State Superintendent of Schools may remove a local superintendent for immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty, providing the charges are presented to the accused in writing and at least 10 days' notice is given of an opportunity to be heard in person or by counsel.[2]

By law, the superintendent of schools serves as the "executive officer, the secretary, and treasurer of the county board of education." Except when his own tenure, salary, or the administration of his office are being discussed, the superintendent, or his designated representative, is required to attend all meetings of the board. He has the right to advise the board on any question under consideration but does not have the right to vote.[3]

The general duties of a local superintendent of schools are stated as follows by statute:

> The county superintendent of schools, as

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[1] Requirements for Certificates for Administrators, Supervisors, and Teachers, Bylaw 617:11, p. 12.

[2] Annotated Code of Maryland, art. 77, sec. 57.

[3] *Ibid.*, art. 77, sec. 39.

> the executive officer of the county boards of education, shall see that the laws relating to the schools, the enacted and published bylaws and the policies of the State Board of Education, and the rules and regulations and the policies of the county board of education are carried into effect.[1]
>
> The county superintendent of schools shall explain the true intent and meaning of the school law, and of the bylaws of the State Board of Education. He shall decide, subject to the provisions of Section 160[2] of this article, without expense to the parties concerned, all controversies and disputes involving the rules and regulations of the county board of education and the proper administration of the public school system, and this decision shall be subject to appeal to the county board. Further appeal may be had to the State Board of Education if taken in writing within thirty days following the final decision of the county board.[3]

From time to time the General Assembly has enacted more specific duties for the local superintendent. These are summarized as follows:

1. Nomination of all certificated personnel. While the superintendent cannot appoint certificated personnel, this being the prerogative of the board, neither can the board appoint personnel except on the recommendation of the superintendent. This same relationship of roles exists with respect to promotions,

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[1] *Ibid.*, art. 77, sec. 58

[2] Section 160 of Article 77 is the Professional Negotiation Act which provides for a special procedure to handle impasses reached in negotiations.

[3] Annotated Code of Maryland, art. 77, sec. 59.

suspensions, and dismissals. The superintendent has the authority to transfer personnel "as the need of the schools require."[1]

2. Development of in-service training for personnel.[2]

3. Preparation of curriculum guides.[3]

4. Preparation of annual budget. He shall in every way seek adequate funds for the development of the public schools of the county.[4]

5. Preparation of annual report showing the condition, accomplishments, and needs of the school system. He must also cause to be prepared all reports required by the State Board of Education.[5]

6. Evaluation of the program of instruction with periodic reports being made to the board.[6]

7. Visitation of schools to observe management and instruction.[7]

8. Classification of certificates of all teachers not less

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[1] *Ibid.*, art. 77, sec. 62

[2] *Ibid.*, art. 77, sec. 63.

[3] *Ibid.*, art. 77, sec. 66.

[4] *Ibid.*, art. 77, sec. 70.

[5] *Ibid.*, art. 77, sec. 71.

[6] *Ibid.*, art. 77, sec. 65.

[7] *Ibid.*, art. 77, sec. 64.

than once in two years. Teachers' certificates are rated by a superintendent of schools as being "first class" or "second class."[1]

9. Approval of all contracts entered into by the local school boards.[2]

10. Recommendations for construction, renovation, or condemnation of school buildings.[3]

11. Preparation of lists of textbooks, supplies, and equipment as are needed by the school system. These lists are recommended to the board for purchase or rental.[4]

Autonomy of Baltimore City Public Schools

In 1872, the General Assembly gave the Baltimore City government autonomy with respect to the operation of its public school system.[5] This autonomy was so deeply established and accepted by 1915 that the famous Flexner study limited itself to recommendations related solely to county schools.[6] Although recent legislative enactments have eroded the autonomy of the school system in Baltimore City, this independent status remains substantially intact.

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[1] Ibid., art. 77, sec. 110.

[2] Ibid., art. 77, sec. 61.

[3] Ibid., art. 77, 60.

[4] Ibid., art. 77, 67.

[5] Laws of Maryland, 1872, ch. 377.

[6] Flexner and Bachman, Public Education in Maryland, p. viii.

The autonomy statute for Baltimore City schools reads as follows:

> The mayor and city council of Baltimore shall have full power and authority to establish in said city a system of free public schools, which shall include a school or schools for manual or industrial training, under such ordinances, rules and regulations as they may deem fit and proper to enact and prescribe; they may delegate supervisory powers and control to a board of school commissioners; may prescribe rules for building schoolhouses, and locating, establishing and closing schools, and may in general do every act that may be necessary or proper in the premises.[1]

The Board of School Commissioners of Baltimore City is a creature of the City Charter. The board consists of nine members who are appointed by the Mayor with the approval of the City Council. The terms of board members are for six years with three vacancies occurring every other year. Board members are eligible for reappointment. They serve without compensation. The Mayor also designates the president from the membership of the board and may change this designation at his pleasure. In selecting board members, the Mayor is directed to seek citizens ". . . he deems most capable of promoting the interest of public education by reason of their intelligence, character, education or business experience." The Mayor is also admonished to ignore their ". . . ecclesiastical or political ties." Members of the board must have been citizens of the city or at least one year prior to appointment.[1]

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[1] Annotated Code of Maryland, art. 77, sec. 142.

The Mayor may remove board members at his pleasure during their first six months of service. Thereafter, board members may be removed by the Mayor only with cause and are entitled to a hearing before the Mayor. They may be removed without cause at any time by a majority vote of the City Council.[2]

Duties.--The City Charter specifies several duties for the board which are summarized as follows:

1. Appointment of a Superintendent of Public Instruction. The Superintendent may be removed at pleasure, but he is entitled to a hearing before the Board.

2. Appointment, promotion, separation, and demotion of all professional personnel, upon nomination of the superintendent.

3. Selection of school sites, construction of facilities, and maintenance of buildings.

4. Determination of specifications for school supplies and equipment.

5. Preparation of annual budget.[3]

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[1] Charter, City of Baltimore, art. VII, sec. 58.

[2] *Ibid.*, art. IV, sec. 6.

[3] *Ibid.*, art. VII, secs. 58, 59.

In recent years, the City Board has been subjected to various sections of the law which govern county boards, e.g., the provisions for collective bargaining, duty-free lunch periods for teachers, and financial reports.[1]

Relationships of Local Boards of Education to Local, Elected Fiscal Authorities

All local boards of education in Maryland are fiscally dependent upon local, elected fiscal authorities. The Court of Appeals has made it clear, however, that a county board of education is not a part of the county government, stating in Board of Education of Montgomery County v. Montgomery County (1964):

> Section 68 is not an ad hoc enactment; it is part of a carefully conceived legislative structure in which the respective powers and limitations of local school boards, the State Board of Education and county governments are delineated and balanced. The board of education is not a part of the executive branch of the county government nor an agency under its control.[2]

In Anne Arundel County v. Board of Education of Anne Arundel County (1968), the Court of Appeals reaffirmed the position taken in the Montgomery County case and further labeled a local board of education as "an independent" agency."[1]

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[1] Annotated Code of Maryland, art. 77, secs. 112, 160.

[2] Board of Education of Montgomery County v. Montgomery County, 237 Md. 191, 197 (1964).

The Court of Appeals in Bernstein v. Board of Education of Prince George's County (1967) ruled that a local board of education is not a state agency. The court recognized, however, that a local board of education has broad administrative powers in the county within which its jurisdiction applies.[2]

Although the Court of Appeals has not addressed itself to this question with respect to the Board of School Commissioners of Baltimore City, the City Charter labels the employees of the board as a "Department of Education" of the city government.[3]

Boards of Visitors of the State Colleges

A board of visitors has been established by the General Assembly for each college under the control of the Board of Trustees of the State Colleges. Each board of visitors is comprised of seven appointees of the Governor, one faculty member elected by the faculty of the college, and one student member elected by the student body of the institution. The Governor is instructed by law to appoint citizens of the state ". . . on the basis of their character and fitness, interest in higher education, and knowledge of the problems of education and the institution." The appointed members are granted five-year terms, are eligible for reappointment, but are limited to a maximum of ten years of service. Board members serve without compensation.[1]

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[1] Anne Arundel County v. Board of Education of Anne Arundel County, 248 Md. 512, 528 (1968).

[2] Bernstein v. Board of Education of Prince George's County, 245 Md. 464, 471, 472 (1967).

[3] Charter, City of Baltimore, art. VII, secs. 59, 60.

A board of visitors is directed by law to:

> . . . .
>
> (g) (1) Assist the president in the determination of the goals of the college and in the evaluation of progress toward such goals.
>
> (2) Review budget proposals as developed by the president, make recommendations, and advise and assist in the preparation of the annual budget.
>
> (3) Advise and assist the president in the development of community related programs.
>
> (4) Assist in the conduct and development of community related programs.
>
> (5) Assume leadership in the development of community and private support for the college.
>
> (6) Carry out such other responsibilities as delegated to it by the Board of Trustees of the State Colleges or the college president.
>
> (h) The Board of Trustees of the State Colleges shall consult with the board of visitors for any college whenever the Board of Trustees is selecting a president for the college.[2]

Thus, it is obvious that the responsibilities of the boards of visitors are advisory in nature. The delegation of power is from the Board of Trustees of the State Colleges to the individual president to the college community.

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[1] Annotated Code of Maryland, art. 77A, sec. 12-1.

[2] *Ibid*.

Local Boards for Community Colleges

A public community college is defined by Maryland law as:

> . . . an institution of higher education, offering the equivalent of freshman and sophomore years of college work and at least one two-year program of post high school education and performing one or both of the following functions:
>
> (1) Offering terminal, vocational, technical, and semi-professional programs; or
>
> (2) Offering terminal nontechnical programs.[1]

The 16 public community colleges in Maryland enrolled 24,070 full-time and 34,646 part-time students in the fall of 1973. Full-time enrollment increased by 3.3 per cent above that of the previous year. Part-time enrollment increased by 19.6 per cent.[2] The Maryland Council for Higher Education projects that public community colleges in the state will enroll 100,000 full and part-time students in 1980.[3]

All 16 public community colleges operating in Maryland were established by local boards of education. In 1968, the General Assembly enacted a statute giving a local board of education, which also serves as a college board of trustees, the option of requesting to be divested of its responsibility for governing a community college. A board desiring to pursue this course of action simply requests the Governor to appoint a separate board of trustees for the community college in that subdivision. Through this divestment procedure or by specific legislative enactments, separate boards of trustees have been established for all existing community colleges, except for the Garrett (County) Community College.[1] In Baltimore City, a separate board is appointed by the Mayor and approved by the City Council.

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[1] *Ibid*., art. 77A, sec. 4.

[2] *Selected Statistical Data 1972-1973, Community Colleges in Action* (Parole: Maryland State Board for Community Colleges, 1974), pp. 5-6.

[3] *Annual Report and Recommendations--Maryland Council for Higher Education*, 1972, p. 1-7.

A separate board consists of seven members regardless of the size of the county, the number of institutions in the county, or the enrollment of the institutions.[2] In Baltimore County, a separate board of trustees governs three community colleges. In Baltimore City and in all other counties which have community colleges, single institutions are operated by the local boards. The Montgomery (County Community) College is a single institution with two campuses.[1]

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[1] Brent M. Johnson, Assistant Executive Director, State Board for Community Colleges, interview, April 24, 1974.

[2] Annotated Code of Maryland, art. 77A, sec. 9.

Members of separate boards of trustees are appointed for six-year terms and are eligible for reappointment. Initial appointments are for varying terms of one to six years, so that a system of staggered service will prevail through the years. These appointments, unlike those to local boards of education, are subject to Senate approval.[2] A separate board elects its own chairman "from time to time" and the president of a local community college serves as secretary-treasurer of the board.[3] In Baltimore County, which has the only multi-college system in the state, the Board of Trustees selects on of the three college presidents to serve as secretary-treasurer.

Separate boards of trustees assume all the power for community colleges granted to boards of education by law. Also, title to all community college property is transferred to a new board.[4] The General Assembly has granted community college boards of trustees the following general authority:

> To maintain and exercise general control over the community college, to keep separate records and minutes, and to adopt reasonable rules, bylaws or regulations to effectuate

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[1] Second Annual Report and Recommendations of the Maryland State Board for Community Colleges, p. VII.

[2] Annotated Code of Maryland, art. 77A, sec. 9.

[3] Ibid., art. 77A, sec. 5.

[4] Ibid., art. 77A, sec. 10.

and carry out the provisions of this subtitle.

Other duties of a board of trustees are summarized as follows:

1. Appointment of the president and all other employees.
2. Acquisition and disposition of property.
3. Receipt of funds and gifts.
4. Determination of entrance requirements.
5. Approval of curricula, subject to meeting minimum standards promulgated by the State Board for Community Colleges.
6. Establishment of student fees.[1]

The legal provision for a separate board for a community college only applies in a county where such an institution already exists. If a community college is to be established in one of the seven counties which does not currently have such an institution, this action must be initiated by the local board of education, subject to the approval of the State Board for Community Colleges.[2] The following counties do not operate community colleges and are not participating in a regional complex: Calvert, Carroll, Dorchester, Somerset, Wicomico, Worcester, and St. Mary's.

Regional community colleges may be established by the

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[1] Ibid., art. 77A, sec. 1.

[2] Ibid., art. 77A, secs. 1, 2.

State Board for Community Colleges to serve two or more counties or one or more counties and Baltimore City. To date, Chesapeake College is the only regional institution in the State. Chesapeake College is supported by four Eastern Shore counties: Caroline, Kent, Queen Anne's, and Talbot.

All legal provisions for single-county community colleges apply to regional colleges, including the option of requesting that the Governor appoint a separate board.[1] This option has been exercised by Chesapeake College which now has a separate board of trustees. Previously, Chesapeake College was operated by a board composed of representatives of the local boards of education from the participating counties.

While a detailed discussion of community college finance is beyond the scope of this study, it is interesting to note that by statute a community college is fiscally dependent upon the local, elected officials. The relationship is similar to that which exists between a local board of education and local elected, fiscal authorities. The state pay 50 per cent of the current expense cost of a community college; the local government assumes 28 per cent of the cost; and the students are charged 22 per cent. The state's share may not exceed $700 for the fiscal year for each full-time equivalent student, except in counties where the population has not reached 50,000 and the enrollment of a college is less than 500 students. In such an instance, the state's share is limited to $1,100 per student, and the proportion of state aid is raised to 55 per cent.[1]

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[1] *Ibid.*, art. 77A, sec. 2.

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[1] _Ibid._, art. 77A, sec. 7.

CHAPTER V

CONCLUSIONS

1. Maryland school and college law is built upon an historical foundation which has emphasized centralization of authority.

While school districts throughout the nation were being consolidated, from 127,422 in 1932 to 17,036 in 1972, the Maryland county system of school districting remained intact with but 24 units. The 23 county school systems have been subject to broad visitatorial powers of the State Board of Education as interpreted by the Maryland Court of Appeals on many occasions beginning with Wiley v. Board of County School Commissioners (1879). The Baltimore City school system is generally autonomous, but in recent years the General Assembly has moved toward including more aspects of local public education under general state school statutes and within the jurisdiction of the State Board of Education, e.g., the Professional Negotiations Act of 1968. Thus, authority for elementary and secondary education in Maryland has become even more centralized in recent years. The State Board of Education has exercised its visitatorial power and its authority to enact bylaws sparingly; therefore, local boards of education have been responsible for detailed curriculum development, personnel policies which transcend state minimum requirements, and the organization of individual schools.

Prior to 1963, the State Board of Education and the Board of Regents of the University of Maryland shared the responsibility for all of public higher education in the State, except for the governance of two institutions, Morgan State College and St. Mary's Seminary Junior College (now St. Mary's College.) The Maryland system of higher education was greatly expanded and considerably decentralized during the 1960's. A new Board of Trustees for the State Colleges was created in 1963 and state teachers colleges, which had operated under the aegis of the State Board of Education, were converted to multi-purpose state colleges. Morgan State College was brought into this system in 1967.

The State Board of Education, which had fostered the community college movement in Maryland, was divested of its jurisdiction in this area of higher education in 1969 when the General Assembly created a new State Board for Community Colleges.

This tripartite system of public education--University of Maryland, state colleges, community colleges--has maintained an arm's length relationship with the Maryland Council for Higher Education. In 1972, the General Assembly granted coordinating authority to the Council specifying for the first time that this body was more than an "advisory" group. Despite its loss of power as a governing board in higher education, the State Board of Education still retains the right to approve and accredit all institutions of higher learning. The 1972 amendments to the law pertaining to the Maryland Council for Higher Education also give this body the authority to recommend all new degree programs in higher education. Thus, the State Board of Education and the council have overlapping authority in the important area of program approval in higher education. Recognizing this dilemma, the State Board of Education adopted the following resolution in 1972:

> The future development and coordination of higher education in Maryland would be enhanced by delegating to one State agency those responsibilities in higher education now delegated to the Maryland State Board of Education, the State Superintendent of Schools and the Maryland State Department of Education . . . . The agency that appears best equipped to assume this broadened responsibility for the coordination and future development of higher education in Maryland is the Maryland Council for Higher Education . . . .[1]

Officials representing the State Board of Education at recent hearings have made it clear that the board now holds the position that the 1972 resolution should not be effected until the Commission on the Structure and Governance of Education makes its recommendations with respect to the future composition and role of the Maryland Council for Higher Education.[2]

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[1] *Minutes*, Maryland State Board of Education, October 25, 1972.

[2] Dr. H. David Reese, Assistant Director, Office of Higher Education and Accreditation, State Department of Education, interview, April 25, 1974.

The community college movement during its relatively short history in Maryland has developed a tradition of decentralization; the State Board for Community Colleges appears to have little statutory authority to coordinate the community college movement which is the most rapidly-growing segment of public higher education in Maryland.

Thus, in less than a decade, public higher education has moved from a highly-centralized structure, primarily under two boards to a fragmented operation which shows little evidence of coordinated planning. It remains to be seen whether the Maryland Council for Education will fulfill the coordinating role which has been handed to it in an indecisive manner by the 1972 General Assembly.

2. Prior to 1963, school and college law in Maryland was closely interrelated. As noted earlier, the state colleges and the community colleges were separated structurally from elementary and secondary education during the 1960's. The trend toward separate law for elementary and secondary education and higher education was accelerated in 1969 when the general revision of the school law recommended by the Zimmerman Commission divided the former Article 77 of the Annotated Code of Maryland into Article 77--Public Education, and Article 77A--Higher Education.

While statutes still make the State Superintendent of Schools an ex officio member of the Board of Trustees of the

State Colleges and the State Board for Community Colleges, he is no longer a member of the Maryland Council for Higher Education.

Ironically, this separation of school and college statutory law has developed in an era when the common law appears to be making less distinction between these two basic levels of American education. For example, a landmark "students' rights" case, Tinker v. Des Moines School District (1969), involved the behavior of junior and senior high school students, but it is often cited in cases affecting higher education.[1]

3. In 1916, the Maryland school system was general depoliticized by the General Assembly through its adoption of the recommendations of the Flexner Report. The General Assembly also delegated broad authority to the State Board of Education in the 1916 act; since that time the legislature has made few intrusions in the areas of curriculum, teacher certification and teaching methodology.

When the modern University of Maryland was established by the General Assembly in 1920, the tradition of non-legislative interference with instructional matters established with respect to the public school system prevailed. This freedom of the university to establish its own policy and manage its own affairs was greatly enhanced by the Autonomy Act of 1952, which remains in effect today.

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[1] Tinker v. Des Moines School District, 393, U.S. 503, 507 (1969).

Likewise, the pattern of general legislative delegation of power to educational boards was continued in the 1960's when the Board of Trustees for the State Colleges and the State Board for Community Colleges were created.

4. Prior to the late 1960's, Maryland school and college law was relatively free of litigation. The majority of the cases heard by the Maryland Court of Appeals in the Nineteenth Century and during the first half of the Twentieth Century upheld the board visitatorial powers of the State Board of Education. Consistently, the court declined to intervene in purely educational matters. Judicial decisions in the late 1960's and to date in the 1970's show a willingness of courts, particularly federal courts, to rule on school matters which involve constitutional rights of students, teachers, and other citizens. The Maryland trend reflects a national pattern.

5. Collective bargaining rights have been provided for all elementary and secondary teachers in Maryland since 1968, except for superintendents of schools and those directly involved in the bargaining process as board negotiating team members.[1] This process has had a significant impact on the promulgation of local law for elementary and secondary education as all school board policies involving salaries, wages, hours,

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[1] Annotated Code of Maryland, art. 77, sec. 160.

and other working conditions must be developed through the negotiating process. This has resulted in a greatly increased amount of local law and more careful codification and publication of such law through master agreements between local school boards and teacher organizations.

The 1974 General Assembly authorized board of education in the following counties to enter into formal negotiations with non-certificated personnel: Allegany, Anne Arundel, Baltimore, Calvert, Charles, Dorchester, Garrett, Harford, Montgomery, Prince George's, St. Mary's, and Washington.[1] In addition, supporting employees in Baltimore City bargain under the terms of a local ordinance.

Higher education in Maryland has been but lightly touched by collective bargaining, despite evidence of a rapidly growing national trend towards bargaining within institutions of higher learning. Except in Baltimore City, where the community college faculty bargains by virtue of local law, it is illegal in Maryland for a public higher education board to grant exclusive recognition and collective bargaining rights to a faculty organization. It remains to be seen whether the law will be changed to grant teachers in higher education the collective bargaining rights which elementary and secondary teachers have had since 1968 and whether teachers in higher education will choose to exercise such rights if they are granted by statute.

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[1] Ibid., art. 77, sec. 160A.

6. The pattern of teacher tenure in Maryland was established in 1916 long before judicial precedents in support of fair dismissal practices mushroomed in recent years. Tenure systems for elementary and secondary and four-year higher education institutions in Maryland are within the recent guidelines established by the Supreme Court in Roth[1] and Sindermann,[2] in the judgment of the author. Tenure practices at community colleges vary widely as no state standards exist. It is impossible, therefore, to generalize in stating an opinion as to whether these tenure systems will withstand judicial scrutiny.

Discipline of teachers, short of dismissal, is often subject to grievance procedures in Maryland public school systems, and various administrative appeal systems are in existence in the several institutions of higher learning in the state.

7. Maryland school and college law has recently been modernized with respect to due process rights of students. Although the Zimmerman Commission was generally satisfied to perform a housecleaning job on the basic school code as enacted in 1916, its 1967 recommendations in the area of student

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[1] Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).

[2] Perry v. Sindermann, 408 U.S. 593 (1972).

rights were substantive indeed. The resulting statute on student suspensions and expulsions contains the rudiments of due process required in recent Supreme Court decisions.

In addition, Bylaw 532:1 of the State Board of Education requires all county boards of education to adopt an extensive document on "Student Responsibilities and Rights" by January 1, 1975. Such documents must include a student grievance procedure and must address the following concerns: school attendance, student expression (student and non-student publications), suspension and expulsion, student records, patriotic and religious exercises, student governance, right of assemblage, extracurricular activities, use of school facilities, search and seizure, and non-discriminatory practices.[1]

The General Assembly has left the effecting of student discipline to the discretion of the governing boards in Maryland higher education. The boards of these public colleges and the university have responded to the "hands off" attitude of the General Assembly by adopting elaborate rules of conduct and devising complex judicial systems for trying offenders. These governing boards and the Office of the Attorney General have been alert to precedents established by the plethora of judicial decisions in recent years in support of expanded due process rights for students.

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[1] "Guidelines for the Development of Students' Responsibilities and Rights Documents," Maryland State Department of Education, January, 1974.

8. Generally, Maryland school and college law is steeped in tradition. However, the tradition of Maryland school and college law has been clothed in modern dress during the last decade as the result of the enactment of the basic recommendations of the Curlett Commission for higher education, and the Zimmerman Commission for elementary and secondary education. Educational boards, with the aid and advice of the Office of the Attorney General, have also kept Maryland school and college law in line with changing judicial decisions by promulgating appropriate bylaws, policies, and rules.

9. While a detailed discussion of school finance is beyond the scope of this dissertation, the author recognizes that the present balance in relationships among the Governor, General Assembly, State Board of Education, and local boards of education may face drastic changes if the state assumes the full responsibility for financing public schools in Maryland.

Community colleges, which currently receive approximately 50 per cent of their operating costs from the state, face the same uncertain fiscal future which beclouds the horizon for the public school system. Opponents of full-state funding express fear of loss of local control of both public schools and community colleges and often cite the cliche: "He who pays the piper calls the tune." Proponents of full-funding by the state claim that the University of Maryland and the state colleges which are totally state financed, except for student fees and special income, have not suffered from gubernatorial or legislative interference with academic matters.

10. The delineation of authority for the operation of Maryland schools and colleges among the Governor, the General Assembly, state boards, and local boards has been recognized and clarified in numerous judicial decisions. The chief executive officers of state and local educational boards in Maryland are appointed by and are responsible to those boards rather than being appointed by and responsible to the Governor or other elected officials. This procedure was included in the principal recommendation of the Flexner Commission in 1916. Prior to 1916, the Governor appointed the State Superintendent of Schools who dominated the governance of all public education. It should be remembered that the modern University of Maryland was not established until 1920. The procedure established through the adoption of the Flexner Report by the General Assembly has since been applied consistently to public higher education.

11. The independent character of educational boards in Maryland has encouraged a tradition whereby, generally, laymen, as board members, make broad policy, and professionals, as chief executives, administer this policy. This basic pattern of policy-making boards and policy-executing administrators, operating in an atmosphere of academic freedom which has not

been tampered with by governors or legislators, has produced a system largely free of the vicissitudes of partisan politics.

EPILOGUE

As Alvin Teffler pointed out so graphically in Future Shock, the rate of change in our society is accelerating in unprecedented fashion. This phenomenon has placed considerable stress on our system of education in Maryland.

Educational institutions experienced a mushrooming of enrollments during the quarter of a century following World War II. Suddenly, many school systems and colleges are now actually reporting declines in student enrollments. Within the past few years, educational institutions have been required to cope with new relationships with students, faculties, and patrons a a result of increased judicial concern with repsect to due process. Traditional budgetary concerns have been compounded by the alarming inflationary spiral in our economy.

Because of these factors, Governor Marvin Mandel appointed a commission in early 1973 to study the structure and governance of education and charged it with making a survey of present conditions and with advancing recommendations for the future direction of education in Maryland.

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